

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Newport News Division

JOANN WRIGHT HAYSBERT,

Plaintiff,

v.

BLOOMIN' BRANDS, INC., AND  
OUTBACK STEAKHOUSE OF FLORIDA,  
LLC,

Defendants.

CIVIL ACTION NO.  
4:20cv121

TRANSCRIPT OF PROCEEDINGS

DAY 3

Norfolk, Virginia

August 10, 2023

BEFORE: THE HONORABLE REBECCA BEACH SMITH, and a Jury  
United States District Judge

APPEARANCES:

CRANDALL & KATT

By: David A. McKelvey

And

HAYSBERT & MOULTRIE LLP

By: Nazareth M. Haysbert

Counsel for the Plaintiff

1 APPEARANCES CONT'D:

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3           McGAVIN, BOYCE, BARDOT, THORSEN & KATZ, P.C.  
4       By: John D. McGavin  
5           Emily Blake  
6           Counsel for the Defendants  
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I N D E X

**PLAINTIFF'S  
WITNESSES**

<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
JOANN HAYSBERT	273	306	400
AARON FILLER, PH.D.	408	432	
AARON FILLER, PH.D.	445	486	511

**DEFENDANT'S  
WITNESSES**

<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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NONE

E X H I B I T S

**PLAINTIFF'S  
NO.**

**PAGE**

NONE

**DEFENDANT'S  
NO.**

**PAGE**

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1 (Hearing commenced at 10:03 a.m.)

2 THE COURT: Two quick matters. The Court was  
3 advised through the clerk that Mr. Haysbert had some type of  
4 objection to opening statement. The Court is not going to  
5 entertain that objection for three reasons: Number one, the  
6 jury is specifically told that opening statements are not  
7 evidence, so that is not evidence that has come before the  
8 jury. It also is not argument. It is just something that  
9 you tell the jury, this is what the case is going to be  
10 presented.

11 Number three, there was only one objection that I  
12 recall during opening statement. I overruled that  
13 objection. I stand by that ruling. We are not going to  
14 re-do everything in this case and as soon as something  
15 occurs and you go back and think about it or look at it, you  
16 want to make an objection. If there was an objection to  
17 opening statement, we had a lengthy sidebar yesterday. It  
18 was never brought up. So it is too late to make an  
19 objection to opening statement, and I will reiterate. It is  
20 not evidence. It is not argument. There was one objection.  
21 The objection was overruled. It was never mentioned  
22 contemporaneously with the opening statements, and it was  
23 never mentioned in the sidebar that we had, and we are not  
24 going to come in every day and re-visit things that should  
25 have been made known to the Court at the time they occurred.

1 I find no problem with the opening statements. In fact, to  
2 remedy, if you have a problem, is at the end, when the case  
3 is over, you tell the jury, so and so said during opening  
4 statements, but that evidence didn't come in to you.

5 So that is what you do. It's your way of setting  
6 up trust with the jury. One side says, well, Mr. Smith said  
7 that he was going to present so and so to you in his opening  
8 statement, and it hadn't been done. So that's the way you  
9 handle that. So I will not entertain, a day later,  
10 something over opening statements that I think were in total  
11 approximately 30 minutes, the total opening statements.  
12 That's the first thing.

13 The second thing, I understand that there remains  
14 an objection from the defense to the Filler report, and I  
15 understand that. We will take up any of that before  
16 Dr. Filler comes, and we will not hold up the jury this  
17 morning. So, consequently, I would direct that the jury be  
18 brought in, and the clerk call the case and the roll of the  
19 jury.

20 MR. MCGAVIN: Your Honor, may I just pass up some  
21 case authority for the Court to consider before we get to  
22 Dr. Filler so that the counsel and the law clerk and the  
23 Court has a copy?

24 THE COURT: Certainly.

25 MR. MCGAVIN: Thank you.

1 THE COURT: Did you give opposing counsel a copy?

2 MR. MCGAVIN: I did, Your Honor, and I highlighted  
3 the section I would like the Court to consider, and for the  
4 record the case is called *Vilseck v. Campbell*. There is  
5 two, one for the law clerk. Thank you, Tammy.

6 THE COURT: So the authority, and you've given a  
7 copy to plaintiff's counsel, you've given two copies to the  
8 Court, and you've highlighted the case of particular  
9 interest.

10 MR. MCGAVIN: Yes, Your Honor. For the record,  
11 it's *Vilseck v. Campbell*, 242 Virginia 10, a 1991 opinion  
12 from the Virginia Supreme Court. Thank you.

13 MR. HAYSBERT: Your Honor --

14 THE COURT: We are not going to argue.

15 MR. HAYSBERT: I'm not arguing anything. I'm going  
16 to give my stuff in the record. He's given his in the  
17 record as well.

18 THE COURT: All he is doing is giving support.

19 MR. HAYSBERT: Of course.

20 THE COURT: An objection that has already been  
21 made. I'm not entertaining arguments right now.

22 MR. HAYSBERT: I'm not giving you arguments.

23 THE COURT: Stop interrupting, please. I'm trying  
24 to talk, and you're talking over me. Don't do that anymore.

25 MR. HAYSBERT: I'm sorry, Your Honor.

1 THE COURT: All he did was hand up some authorities  
2 so the Court could be prepared in advance. That's all that  
3 he did. He didn't argue. I don't even know what the  
4 authority says. Now what are you going to say?

5 MR. HAYSBERT: I'm not going to argue. This is  
6 something completely different from what he's talking about.  
7 So I have before me some information that I would like the  
8 Court to read into the record in the jury's presence that  
9 has to do with the witness that we intend to call today,  
10 Nick Seifert.

11 So this is information that relates to Bloomin'  
12 Brands' operational control over the subject at the  
13 Chesapeake restaurant. So I'd like to hand this over to the  
14 Judge and have the Judge read this into evidence.

15 THE COURT: I don't read things like that into the  
16 record. You get it into evidence through a witness. I  
17 don't sit and read documents into the record. The only  
18 thing I would read into the record would be a stipulation  
19 that you all had made. I'm going to do that as soon as they  
20 come in. I'm not going to read a document as the Judge into  
21 the record. That's your job as an attorney to get that  
22 document into the record. Is it listed in your exhibits?

23 MR. HAYSBERT: Your Honor, it's a stipulation we  
24 are talking about. That's what I was referring to.

25 THE COURT: All I'm reading is what you gave me as

1 a stipulation. If you want more than what you were  
2 stipulated to, that's your role as an attorney to get it in.  
3 All I'm reading is a stipulation, it looks like it's one  
4 line, and that's what the parties have agreed on. The  
5 parties did not give to the Court any such document for the  
6 Court to read as a stipulation.

7 MR. HAYSBERT: Your Honor, the parties' stipulation  
8 is here regarding Bloomin' Brands' omission --

9 THE COURT: I've got it. You have given it to me.

10 MR. HAYSBERT: We also --

11 MR. McKELVEY: Your Honor, can I clarify?

12 THE COURT: Something needs to be clarified. I  
13 have a jury waiting. I don't understand why you all can't  
14 get your acts together before you arrive in the courtroom  
15 each day.

16 MR. McKELVEY: Your Honor, so there was a -- the  
17 final pretrial order from the initial pretrial conference  
18 contained three stipulations of undisputed facts, and that  
19 is Docket 243, the first page. We are requesting that the  
20 Court read those three stipulated facts, the stipulation  
21 that we discussed earlier, and then the admission in the  
22 second pretrial order. This work order was agreed that the  
23 document is a business record, which was an agreement by  
24 defense counsel during that -- it was an admission or  
25 stipulation by defense counsel during that hearing. What I



1 would like to propose, Your Honor, is I showed defense  
2 counsel the three documents that we are referring to and  
3 then tender to the Court.

4 THE COURT: Let's go to where they are in the  
5 record.

6 MR. McKELVEY: Yes, ma'am.

7 THE COURT: I've got everything right here in front  
8 of me.

9 MR. McKELVEY: Okay.

10 THE COURT: Additional stipulation is as follows:  
11 First of all, you have the stipulations in the final  
12 pretrial order, and I was going to read those. They start  
13 on Page 1, and I believe it is three stipulations.

14 MR. McKELVEY: Yes, ma'am.

15 THE COURT: The other stipulation is the one that  
16 was filed on 8-7-2023, and it's one admission stipulation.  
17 That's all that I have in front of me.

18 MR. McKELVEY: Your Honor, if you would look at the  
19 final pretrial, this is the same thing, Docket 243, Page 8.

20 THE COURT: Wait just a minute, please.

21 MR. McKELVEY: Yes, ma'am.

22 THE COURT: I've got a very large notebook here.

23 MR. McKELVEY: I understand.

24 THE COURT: The final pretrial, the supplemental  
25 final pretrial?

1 MR. McKELVEY: This is the final pretrial -- the  
2 same docket, 243, so it would be the same thing that the  
3 other undisputed fact, the three numbered stipulations. If  
4 you go to Page 8 of that document, there is another one  
5 there that came out of the initial pretrial conference with  
6 Judge Krask, I believe. It's number 30.

7 THE COURT: Page 8 of that document?

8 MR. McKELVEY: Page 8, block 30.

9 THE COURT: Well, that would come up when you try  
10 to introduce the document. In other words, there is no  
11 objection. That's not a stipulation. All they're doing is  
12 saying the work order request -- this is just standard  
13 discovery practice. This is not what's called our standard  
14 discovery and then reduction to the pretrial order.

15 This is, you want to get in a work order, and he  
16 reserved for the trial judge whether it was admissible.  
17 Once we determine the admissibility, then they agree that  
18 you don't have to overcome the authenticity. All they're  
19 agreeing to is that it is a business record, but they're not  
20 agreeing to admissibility. So I wouldn't read a stipulation  
21 that a document is authentic if it may not even come into  
22 the record. So, no, that is not a stipulation, and I will  
23 not read it. I will read the four that have been labeled  
24 stipulation. That's my ruling.

25 MR. McKELVEY: Understood.

1 MR. HAYSBERT: Thank you, Your Honor.

2 THE COURT: Can you bring the jury in, please.

3 (Jury in at 10:14 a.m.)

4 THE COURT: Good morning, ladies and gentlemen of  
5 the jury. I hope that you had a very nice evening, and I  
6 would ask that the clerk call the case and the roll of the  
7 jury.

8 THE CLERK: In case number 4:20cv121, JoAnn Wright  
9 Haysbert versus Bloomin' Brands, Inc., and Outback  
10 Steakhouse of Florida, LLC.

11 Mr. McKelvey, Mr. Haysbert, is the plaintiff ready  
12 to proceed?

13 MR. MCKELVEY: Yes.

14 THE COURT: Good morning, counsel.

15 THE CLERK: Mr. McGavin, Ms. Blake, are the  
16 defendants ready to proceed?

17 MR. MCGAVIN: Yes. Good morning, Your Honor. John  
18 McGavin on behalf of the defendants, Emily Blake at counsel  
19 table with me, and Ray Graham also at counsel table. Thank  
20 you.

21 THE COURT: Good morning.

22 THE CLERK: Now, members of the jury, please answer  
23 present as your name is called.

24 (Roll call of jury.)

25 THE CLERK: All jurors are present, Your Honor.

1 THE COURT: All right. Thank you.

2 Ladies and gentlemen of the jury, we are ready to  
3 begin the case. However, before we begin, I mentioned to  
4 you in the preliminary instructions that there may be some  
5 stipulations, and there are a few, and I'm going to read  
6 those to you, and since the parties have so stipulated as to  
7 these matters or facts, you should take those stipulations  
8 as true and accept them as facts for the case.

9 The parties stipulate to the following facts as  
10 being undisputed between them: One, on May 23, 2018,  
11 defendant Outback Steakhouse of Florida, LLC, owned and  
12 operated the Outback Steakhouse in Chesapeake, Virginia, at  
13 4312 Portsmouth Boulevard; two, plaintiff fell while  
14 visiting the Outback restaurant in Chesapeake, Virginia on  
15 May 23, 2018; three, plaintiff was a business invitee of  
16 Outback Steakhouse of Florida, LLC, when she entered the  
17 Chesapeake Outback Steakhouse on May 23, 2018. Further,  
18 defendant Bloomin' Brands states as follows to a request for  
19 a stipulation, admit that you were the franchisor of the  
20 subject location at the time of the incident. Response is  
21 admit.

22 So they have agreed, Bloomin' Brands has agreed  
23 that it was the franchisor of the Outback Steakhouse that  
24 was located on Portsmouth Boulevard that I just mentioned to  
25 you.

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1           Those are the stipulations for the case, and you  
2 can call your first witness, Mr. Haysbert.

3           MR. HAYSBERT: Thank you, Your Honor.

4           I'm going to call Dr. JoAnn Haysbert to the witness  
5 stand.

6           THE COURT: Dr. Haysbert, if you would please come  
7 forward and be sworn.

8           (Witness was sworn.)

9           JOANN HAYSBERT, called by the plaintiff, having  
10 been first duly sworn, was examined and testified as  
11 follows:

12                                 DIRECT EXAMINATION

13 BY MR. HAYSBERT:

14 Q. Good morning, Dr. Haysbert.

15 A. Good morning.

16 Q. Where did you grow up?

17 A. I grew up in a small town, Kingstree, South Carolina.

18 Q. What do you do for a living?

19 A. I am a professional educator.

20 Q. Why did you choose that career?

21 A. I always wanted to be helpful in what I call touching the  
22 future. Young people are not just here for the day, they  
23 grow up, and they are going to be leaders of tomorrow, and  
24 I've always wanted to be a part of that educational process.

25 Q. Can you share with the jury what brings you here today?

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1 A. Yes. Today I am the plaintiff in the slip and fall  
2 negligence case against Outback Steakhouse.

3 Q. Before we get into the details of your slip and fall, can  
4 you explain for the jury what your average day was like  
5 before the slip and fall accident?

6 A. Certainly. As a professional educator at a university  
7 where I work, my average day was 10, 12 hours day, at least  
8 average of 8 to 10 meetings, not counting the unexpected  
9 requests that may come from a parent or student, faculty  
10 member, or my colleagues.

11 So it was obviously very, very, very fast paced, and  
12 required a great deal of dealing with complex issues as well  
13 as with those that are not so complex. So just a very, very  
14 busy day, that required meetings and dealing with a lot of  
15 people on a lot of different fronts.

16 Q. What was your family life like?

17 A. My family life was a good life in the sense of my five  
18 children and I always had fun times together. We had quality  
19 time because I worked very hard, as you can tell from what I  
20 said. So we always looked forward to having quality time.  
21 Most of our quality time was spent on weekends, and to be  
22 honest with you, in church or some church function that my  
23 kids were involved in and I was involved in as well. I did a  
24 lot of with them. I like doing things like going to thrift  
25 stores and stuff like that.

1 Q. On the day of the accident, and we are going to be  
2 talking about the accident now of May 23rd, 2018, can you  
3 please walk the jury through what happened that day.

4 A. Certainly. That day was planned as a great day for my  
5 daughter and I, my oldest daughter. We live together, and  
6 she lived with me, and because of our work schedules, we  
7 typically didn't have time to do a lot of things together.

8 So that day to me was a beautiful day, not thinking  
9 about what the weather was, that's not what I was referring  
10 to, but because I was going to get time, had time to spend  
11 with my daughter. So what we did was decided we would go get  
12 our hair done in Chesapeake. We live in Hampton, which is  
13 about a 20-, 30-minute ride away, depending on what the  
14 traffic-wise. So we went to the salon that we have gone to  
15 often, and we went together. We had our hair done and  
16 afterwards decided to go pick up something to eat rather than  
17 having to go home and cook.

18 So we decided to go to the closest restaurant that I  
19 can think of at the moment, which was the Outback Steakhouse.  
20 And we went there. We sat in the car, and we placed a  
21 takeout order. I drove there in my car. My daughter was  
22 riding with me. And as we placed the takeout order, I told  
23 her that, I thought, I'll go to the bathroom, I'll be right  
24 back, and she said, okay, and I got out of the car and went  
25 inside to go to the bathroom.

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1           When I got inside, as I recall, as much as I can  
2 recall, there was a hostess stand, and I went up to the  
3 hostess stand, and I told the young lady behind the hostess  
4 stand that I'd like to go to the bathroom. We come to take a  
5 takeout order, could she direct me to it? It was a young  
6 African-American lady that walked from around the stand, and  
7 she walked and pointed to, like this (indicating), and said,  
8 "You walk straight down. Then go to -- when you get to the  
9 end, you take a left, and the bathroom would be right there."

10           I turned to her, and I said, "Thank you very much,"  
11 and proceeded to walk in that direction.

12 Q. Dr. Haysbert, if I may stop you --

13 A. Sure.

14 Q. -- just for a second because I want to back up a little  
15 bit before we go to what happened after she pointed out the  
16 bathroom to you.

17 A. Okay.

18 Q. How were you dressed that day?

19 A. I was dressed in -- I come from work, so I was dressed in  
20 my regular suit clothes like the outfit I had on yesterday; a  
21 jacket, skirt, shoes.

22 Q. What kind of shoes were you wearing?

23 A. The same shoes I'm wearing today, gray heels, dress  
24 shoes.

25           MR. HAYSBERT: Your Honor, if I may, if she can



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1 take a lap and show us what her heels look like.

2 MR. MCGAVIN: No objection, Your Honor.

3 THE COURT: All right. Go ahead.

4 BY MR. HAYSBERT:

5 Q. You may head back to the witness stand.

6 THE COURT: I can't see from here.

7 MR. HAYSBERT: Sure.

8 THE COURT: Thank you.

9 BY MR. HAYSBERT:

10 Q. You may head back to the witness stand, Dr. Haysbert.

11 Thank you.

12 Do you wear heels like the shoes you have on  
13 regularly?

14 A. Almost every day.

15 Q. How long have you been wearing heels?

16 A. Starting as a youngster, trying on my mother's heels,  
17 probably about 13 or 14, but as an adult, from the time I  
18 started working professionally, 20 years old.

19 Q. Have you ever had any problems walking in heels?

20 A. No.

21 Q. So let's back up to who pointed the restroom out to you  
22 at the restaurant? Could you start from there?

23 A. Sure. An African-American woman, young woman, came from  
24 around the stand and turned, as I said, and pointed, it will  
25 be this way. She said walk to the end, and when you get to

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1 the end, the bathroom would be right there on your left.

2 Q. Did you start walking towards the restroom at that point?

3 A. I did.

4 Q. What happened as you made your way to the restroom?

5 A. I only recall taking one, two steps, and I slipped and  
6 slammed my head on the floor, and at that point I was knocked  
7 unconscious because I remember when I came to myself, I had  
8 glimpses and opened my eyes, and I had glimpses of shoes, a  
9 shoe, or a flashback of a shoe or shoes, and I was trying to  
10 figure out what happened because I had took no more than two  
11 steps (indicating). And at that point I remember people  
12 coming to pick me up, get me up off the floor. It seemed  
13 like a lot of people. I don't know how many it was, but it  
14 seemed like a lot of people.

15 THE COURT: Let me just ask you one question,  
16 Dr. Haysbert. When you fell did you fall forward,  
17 backwards, or sideways?

18 THE WITNESS: I fell on my left side.

19 THE COURT: You fell on your left side?

20 THE WITNESS: Yes, because that's the side that was  
21 bruised and in pain with contusions and things like that,  
22 yes.

23 BY MR. HAYSBERT:

24 Q. The whole experience must have been very frightening.  
25 Can you explain to the jury how you were feeling at the

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1 moment when all those people were coming to you.

2 A. I felt fearful. A lot of different words come to mind at  
3 this moment; wobbly, in a daze. My daughter described it  
4 later to me as she --

5 MR. MCGAVIN: Objection, Your Honor.

6 THE COURT: Sustained.

7 THE WITNESS: Okay. I apologize. I felt dazed and  
8 wobbly and unsteady and just trying to figure out what  
9 happened.

10 BY MR. HAYSBERT:

11 Q. As you sit here today, do you know why you fell?

12 A. I fell because the floor was slick. The floor was slick.

13 Q. Before you fell, did you look at the floor?

14 A. No.

15 Q. Sorry to interrupt.

16 A. I was looking straight ahead. The young lady came from  
17 behind the stand, and she pointed me to the bathroom like  
18 this (indicating), and I was looking at where she was  
19 pointing. And when she pointed and said, "Walk straight down  
20 this way, and when you get down, the bathroom will be on your  
21 left," so I turned and -- thanked her, turned around and  
22 walked.

23 Q. Is there something -- the feeling of slick, is that  
24 something that you could feel under your feet or after you  
25 started walking, something you observed physically?

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1 A. Something I felt under my feet because before I made  
2 those two steps, I was on carpet or rug or something like  
3 that. So I felt a difference. So it's like stepping from  
4 there and stepping up on here.

5 Q. Did you have any reason before walking on the floor to  
6 think the floor was dangerous?

7 A. No. None.

8 Q. Did you think there was anything wrong with the floor  
9 before you walked on it?

10 A. No.

11 Q. Did anyone tell you or warn you that the floor might be  
12 dangerous?

13 A. No.

14 Q. Were there any signs warning about a dangerous condition  
15 on the floor?

16 A. No.

17 Q. Any signs saying, "Watch your step"?

18 A. No. I didn't see anything.

19 Q. Was there a mat by the hostess stand?

20 A. It was either a mat or carpet.

21 Q. By the hostess stand or by the front door?

22 A. I think the front door -- I don't know how close they  
23 were together now as I can think of it in my own mind's eye,  
24 but there was a mat at one point, and there was carpet, which  
25 was which place, was it all together, I don't know.

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1 Q. After you fell did anyone from Outback Steakhouse come  
2 and speak with you?

3 A. Yes.

4 Q. Have you ever seen or spoken with Ms. Crosby?

5 A. That's the name that I remember was deposed, and I  
6 remember that name Lisa Crosby was the person that came. She  
7 identified herself as assistant manager.

8 Q. What did she say to you?

9 A. I don't recall all that she said. I do remember her  
10 asking me, would have been something about, "Are you okay?"  
11 something like that, "Would you like me to call an  
12 ambulance?" something along those lines.

13 Q. How did you feel in that moment having her ask you should  
14 she call an ambulance?

15 A. I'm still trying to figure out what happened, to be  
16 honest with you. I'm still trying to figure out what  
17 happened. How you just walk into a place, ask for direction  
18 to a bathroom, get them, and then bang your head and wake up  
19 in a daze.

20 THE COURT: Can you turn up the microphone, if you  
21 can. I think we are having a hard time hearing her  
22 testimony.

23 THE WITNESS: I'm sorry.

24 THE COURT: Speak up, if you can. I know you have  
25 a soft voice.

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1 THE WITNESS: I do. I apologize for that.

2 BY MR. HAYSBERT:

3 Q. Dr. Haysbert, you were offered medical attention?

4 A. Say one more time.

5 Q. You were offered medical attention?

6 A. Yes. The medical attention I was offered was, "Would you  
7 like me to call an ambulance," or "us to call an ambulance,"  
8 something along those lines.

9 Q. Why did you refuse?

10 A. I was afraid. I wasn't thinking about anything other  
11 than what happened, just what happened. I was still thinking  
12 one part of my mind, taking two steps. The other part of my  
13 mind is people picking me up, and do you want to go to an  
14 ambulance.

15 Q. Did you think you were injured in that moment?

16 A. I honestly didn't think so. I didn't know whether I was  
17 injured or not. I was in a kind of what happened, in a daze.  
18 I didn't know.

19 Q. Did you pay for your takeout order?

20 A. I don't remember.

21 Q. Did you leave without getting any food?

22 A. I honestly don't remember.

23 Q. Why is that, that you don't remember?

24 A. I just don't remember. It had to be because of the slip  
25 and fall and the banging on my head.

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1 Q. Before you left the restaurant, did you take any photos  
2 of the area where you fell?

3 A. No.

4 Q. Did your daughter take any photos?

5 A. None to my knowledge. You can ask her, but, no photos.  
6 I wasn't thinking about photos.

7 Q. Why not?

8 A. Because I wasn't thinking about -- just what happened --  
9 all I was thinking about is what happened to me, and I need  
10 to literally get out of there.

11 Q. Did Outback Steakhouse take any photos that you recall?

12 A. I don't know.

13 Q. Did you ever hear back from Lisa Crosby, that manager who  
14 said they would follow up with you?

15 A. No, they did not.

16 Q. Did anyone from Outback Steakhouse get back to you after  
17 the accident?

18 A. Eventually, my daughter called -- Lisa had given her  
19 card, my daughter. It was like a three-way conversation  
20 between the three of us as we sat at the table. She gave my  
21 daughter a card. We called the number, Lisa, we called Lisa  
22 because we did not hear from her. Then I got a response, and  
23 then we called the other person. Another person called us.  
24 I don't remember her name. She's from the corporate office.

25 Q. What kind of conversation did you have with the person

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1 from the corporate office?

2 MR. MCGAVIN: Objection, Your Honor, relevance.

3 THE COURT: Wait. Repeat the question.

4 MR. HAYSBERT: What conversation did you have with  
5 the person from the corporate office? She said that someone  
6 from the corporate office called her, so I'm asking her what  
7 was the conversation that she had with them.

8 THE COURT: I sustain the objection.

9 BY MR. HAYSBERT:

10 Q. Dr. Haysbert, walk me through what happened after you got  
11 home.

12 A. Well, by the time I got home, by that point my whole left  
13 side was swollen. I had -- I was hurting from my head on  
14 down to my ankle. The whole side was swollen and in very,  
15 very bad pain to the point that my daughter helped me make my  
16 way to the bed and iced my whole side down. That was just in  
17 pain and just moaning and groaning because of the pain that I  
18 was feeling, as I said, to my entire left side.

19 Q. Did you think you were really hurt at this point?

20 A. I knew something was wrong at this point, but I didn't  
21 know what.

22 THE COURT: When was this, Dr. Haysbert?

23 THE WITNESS: This was at my house when I got in my  
24 bed, by the time my daughter helped me to my bed.

25 THE COURT: This was the same day when you got



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1 home?

2 THE WITNESS: Yes.

3 BY MR. HAYSBERT:

4 Q. What did you do the following day?

5 A. It was either the following day or the next day, we had  
6 planned to go see my mother. My mother at that time was 90  
7 years old. She is 95 now. We planned to go see my mother,  
8 so my daughter asked me if I thought I could make it on the  
9 trip, and it was to see my mother. The swelling had gone  
10 down a bit, the pain and all that was there, but the swelling  
11 had gone down a bit, so I told her, "Let's try." So my  
12 daughter drove us to South Carolina.

13 Q. When you got to your mother's house, how did you feel?

14 A. It was worse then. It was like all the swelling that had  
15 gone down, and I'll use the word revved up again, and I felt  
16 worse than I did before with all the pain and all, that the  
17 icing that night helped, it did, but by the time I got to  
18 South Carolina, it had revved up again.

19 Q. Did you see a doctor at that point?

20 A. Yes. It was at that point that my daughter and I talked,  
21 and we decided I probably ought to see somebody at this  
22 point. So we went into the nearest urgent care -- I don't  
23 remember the exact name, Medicare, urgent care, something  
24 like that, went into one of those CarePlex places, and I told  
25 them what -- that I slip and fallen and that, you know, the

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1 pain that I had from my head all the way down, and they gave  
2 me a full body x-ray and prescribed some medication, wrote a  
3 prescription for the pain that I was having and said that I  
4 had --

5 MR. MCGAVIN: Objection, Your Honor, as to what the  
6 doctor may have said. She's about to tell us what the  
7 doctor said.

8 THE COURT: I sustain that. What kind of  
9 medication did you receive?

10 THE WITNESS: Pain prescription. Pain medication.

11 BY MR. HAYSBERT:

12 Q. Dr. Haysbert, did the pain on your left side eventually  
13 subside?

14 A. Eventually.

15 Q. How about the bruises?

16 A. Eventually. It took a while because bruises take a while  
17 to go away, but, yes, they did eventually go away.

18 Q. How about the swelling?

19 A. The swelling did eventually go away as well, yes.

20 Q. What about your headaches?

21 A. Headaches lasted much, much longer. I still have  
22 headaches now.

23 Q. Did you see another doctor about your headaches not going  
24 away?

25 A. I went to my permanent physician.

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1 Q. And did any doctor give you a diagnosis of what the cause  
2 was of your headaches?

3 MR. MCGAVIN: Objection, Your Honor, hearsay.

4 THE COURT: Sustained.

5 BY MR. HAYSBERT:

6 Q. Have you ever had an MRI, Dr. Haysbert?

7 A. Yes. I had more than one.

8 Q. Can you tell us what you had an MRI for?

9 A. When I had an MRI, I had one because of my -- let's see.  
10 I had a -- excuse me. I'm trying to remember. I had an MRI  
11 because of vertigo, and I had an MRI because of head injury.

12 Q. Do you still see your primary care physician?

13 A. I still go to the office. My primary care physician  
14 passed away. He treated me for COVID, and he died of COVID,  
15 and I don't want to talk about that.

16 Q. So we are talking -- sorry. We are talking about the  
17 vertigo. Can you talk a little bit more about what, explain  
18 to us.

19 A. Yes. I had one episode of vertigo, and at that time I  
20 remember when it was one morning when I had the episode of  
21 vertigo. I thought we were having an earthquake. My family  
22 and I lived in Oklahoma for a while so I woke up and was  
23 holding the bed, and I yelled out to my daughter, I said, "We  
24 are having an earthquake. We are having an earthquake,"  
25 because the bed was spinning. And so she didn't respond.

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1 But, you know, I thought we were having an earthquake because  
2 the bed spinning, my head was spinning, the bed was spinning,  
3 everything was spinning. I made my way to my bathroom  
4 because I had to throw up. I had to regurgitate.

5 So I made my way to the bathroom and regurgitated,  
6 everything -- I regurgitated. And then by that time my  
7 daughter then came to my room and said, "Momma, we are not  
8 having an earthquake," and so asked me what was the matter,  
9 and I told her how I felt. And so I made my way back to the  
10 bed, and I called Dr. Chinniry, and he told me, I think two  
11 days later, to come in. And so I described to him what was  
12 happening over the phone. So he told me, well, you shouldn't  
13 go to work. And he asked me to come in a couple of days  
14 later, and I went in a couple of days later, and he checked  
15 me, prescribed some medicine. So I was treated. I had  
16 vertigo that one time. I was treated that one time with  
17 prescription medicine that Dr. Chinniry gave me, and I got  
18 better. I've never had vertigo again.

19 THE COURT: He gave you what? Can you hear her?  
20 She's speaking to you, but on this side of the courtroom we  
21 are having more difficulty.

22 THE WITNESS: Okay. Is this better?

23 THE COURT: Yes.

24 THE WITNESS: I just kind of hold it down. Where  
25 should I start?

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1 BY MR. HAYSBERT:

2 Q. You can start with the last thing you said.

3 A. Last thing I said was that I had that one episode of  
4 vertigo, was treated by Dr. Chinniry with prescription  
5 medicine. I've never had vertigo again.

6 Q. Okay. Is there a way -- take it down. Let's see if you  
7 can just speak like that. I think you did change it a little  
8 bit.

9 A. Okay.

10 Q. I want to ask you a question, and then we will see if  
11 that works.

12 A. Okay.

13 Q. So prior to this accident, how was your health?

14 A. Very good. Very good.

15 Q. Can you explain.

16 A. Yes. With the hours that I told you I worked, you had to  
17 have, for me, good health. I had very good health.

18 Q. Did you ever have vertigo before?

19 A. Never had vertigo before. I was just shocked when he  
20 told me that I -- he thought it was vertigo, when I got to  
21 his office.

22 Q. You never had that vertigo experience again after that  
23 one episode?

24 A. I never had that vertigo experience from that day to this  
25 day.

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1 Q. You saw a specialist for that incident?

2 A. I eventually went to -- he ordered an MRI, and so I went  
3 for the MRI. Dr. Chinniry also sent me at some point in time  
4 to an ear, nose, and throat specialist, because he told me in  
5 our conversation in his office that sometimes one gets  
6 vertigo from something with the ear functioning. So he sent  
7 me to that specialist. That was ruled out. It was nothing  
8 wrong with -- the ear, nose, and throat specialist sent back  
9 nothing wrong.

10 Q. Did you experience anything like that episode on the day  
11 you fell at Outback Steakhouse?

12 A. No. As I said before, that bout of vertigo I had, and if  
13 you asked me one that I would want anybody else to have  
14 again, and I never had it, another bout of vertigo. I have  
15 not had one from that day to this, I have not.

16 Q. Have you ever fallen due to vertigo?

17 A. Never fallen due to vertigo. I had that one time, never  
18 had it again.

19 Q. Prior to the slip and fall accident had you ever fallen,  
20 Dr. Haysbert?

21 A. Ever in my life?

22 Q. I'm talking about just as you're walking across a floor  
23 like --

24 A. No, I've not fallen. I'm very careful, when you said  
25 ever falling, because, yes, I've fallen when I was a kid

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1 playing basketball, things like that. So I have fallen  
2 before, but I have never fallen from vertigo or walking  
3 across a floor. I think that's what you're asking.

4 Q. What about falling on the heels that you are --

5 A. Oh, no. I have never fallen on -- no.

6 Q. Would you say your professional lifetime while working,  
7 have you ever fallen while at work?

8 A. I have never fallen while I was at work. I wear shoes,  
9 heels, practically every day, and I said practically because  
10 sometimes like they are doing functions, we are allowed  
11 dress-down days. I may not have on heels that day. I wear  
12 heels the other days.

13 Q. Prior to the accident did you ever have any difficulty  
14 doing your work?

15 A. No.

16 Q. Any difficulty focusing before?

17 A. None.

18 Q. Did you regularly have meetings?

19 A. Absolutely, yes.

20 Q. What was your meeting schedule like?

21 A. As I indicated earlier, the meeting schedules were --  
22 there was meetings that were held an hour and sometimes they  
23 was shorter. They were with individual person, multiple  
24 individuals, and groups, things of that nature, if I'm  
25 understanding the question correctly.

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1 Q. Did you find it easy to concentrate before the accident?

2 A. Yes, I did, very much so.

3 Q. Did you ever have any difficulty remembering things?

4 A. No.

5 Q. Did you often feel tired before the accident?

6 A. I felt tired at times when I moved, and I've had an  
7 unusually difficult week of multiple things, and, yes, I felt  
8 tired before, yes.

9 Q. Did you get many headaches before the accident?

10 A. No, not many headaches.

11 Q. Did you ever frequently take pain medication before the  
12 accident?

13 A. No, not for headaches or anything, no.

14 Q. Were you active in the church before the accident?

15 A. Very active in my church. My community as well. I kind  
16 of look at those two as kind of wrapped together because of  
17 the kinds of things one is done in a church, young people, or  
18 older people, senior citizens, things like that.

19 Q. How about on boards of advisory boards you may serve on?

20 A. I've served on several national boards, college boards,  
21 Southern Association of Colleges and Universities, accredited  
22 universities, Campus Contact, which is service learning,  
23 national organization. So, yes, I served on quite a few.

24 Q. Tell us a little bit about your involvement in the  
25 community before and how that's changed since the accident.



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1 A. My involvement was very -- I had a full schedule of  
2 activities, not only at work but part of working at a  
3 university service. So part of that service will be to your  
4 community. So I tend to try and wrap the community and my  
5 service together by serving on the boards that I just  
6 mentioned to you. That was part of my service to the  
7 community, which was requirement of the university. I served  
8 on a number of them before the accident. I think your second  
9 part of your question?

10 Q. Tell us a little bit about your involvement in the  
11 community before and after.

12 A. Before and after?

13 Q. And after, yes.

14 A. The involvement before was I served on many boards, both  
15 at the national level, and I named a few of those, state  
16 level, as well as City of Hampton. Since the accident, I  
17 have -- those that I can get off, I have gotten off of all of  
18 those. Those that terms ran out, I didn't seek  
19 re-appointment as I would have, and I just tried to minimize  
20 as many things as I could because I just wasn't able to  
21 continue to focus, you know. This accident happened. The  
22 slip and fall was 2018. So we are talking about five years.

23 So it's like over the course of time, things have  
24 changed in me, and I recognize that. It is embarrassing for  
25 me. It's humiliating for me to be able to talk about myself

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1 and what I did before and what I know I can't do now, and  
2 I've tried to make adjustments and accommodations and all of  
3 that for all of the things that I do every day.

4 I can change and do that because of rolling  
5 responsibility I've always had, both at home and in my job.  
6 I am a leader. I'm a responsible person, and if I have  
7 something to do, I tend to think more about how to get it  
8 done, what I can do and what I can't do. But realizing what  
9 I couldn't do, I had to make changes, and I'm still trying to  
10 make those changes.

11 I think I have done a very good job of making those  
12 changes, and those changes include bringing other people to  
13 do things that I wasn't able to do. That is humiliating for  
14 me now, to know that I can't do what I used to do. You have  
15 to ask your colleague, "What are your thoughts on this?"  
16 When you are the one to give thoughts and design and make  
17 planning, and I can't do those things like I used to.

18 And I know that so much so and so, I just say it's  
19 embarrassing and hurtful. It's almost -- it's just a hard  
20 thing for me, very hard thing for me because all the things  
21 I've done, I have worked hard to do them, to earn them. I  
22 did earn them. People helped me, but it wasn't given to me.  
23 And everything has been snatched away from me because I can't  
24 do what I used to do because I slipped and fell on somebody's  
25 floor that didn't take care of their floor. I am hurt. I am

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1 embarrassed. I'm very hurt. I'm very embarrassed. This  
2 whole being here is not what I want to be. I'm here because  
3 I have a right to advocate for myself.

4 What happened to me shouldn't happen to anybody. It  
5 just shouldn't. And that's the most important thing for me,  
6 is advocating for JoAnn Haysbert and my family and anybody  
7 else that falls in the same situation. It's just not right.  
8 It's not fair. It's not right. I'm hurt. I'm embarrassed.  
9 I'm not me anymore.

10 I know the me that I was, and I know the me that I  
11 am, and I'm not the me that I was anymore, and it's hard.  
12 I'm fighting trying to make things happen and keep going.  
13 It's hard, so hard to, you know -- I know I can't continue to  
14 do that. I'm going to retire. I'm going to retire five or  
15 so years earlier than what I planned. Everybody in my  
16 community, where I work, my age and older, they still  
17 continue to work. That was my plan.

18 My mentor, Dr. Harvey, retired when he was 81, was  
19 president of the university 40 some years. That was my plan.  
20 I was supposed to be his successor. I declined because I  
21 know I couldn't do it, and I wasn't going to get into a  
22 position to hold myself to failure.

23 THE COURT: Let me ask you, Dr. Haysbert. Are you  
24 referring to Dr. Harvey who retired?

25 THE WITNESS: Dr. Harvey retired, and I was to be

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1 his successor.

2 THE COURT: How old was Dr. Harvey when he retired?

3 THE WITNESS: 81.

4 THE COURT: You were how old when he retired?

5 THE WITNESS: He retired four years ago now, so I  
6 would have been 73.

7 THE COURT: You would have been 73?

8 THE WITNESS: Yes.

9 THE COURT: Before you go on, sir, are you a  
10 witness in the case? I noticed an individual came in. Are  
11 you scheduled to be a witness?

12 A WITNESS: Yes, ma'am.

13 THE COURT: You need to step out because witnesses  
14 can't be in here, and we'll call you. There should be  
15 someone to show you. Thank you.

16 All right. Go ahead.

17 THE WITNESS: I'm sorry.

18 THE COURT: No. We have a separation of witnesses  
19 rule, and I don't know who the witnesses are. I don't  
20 recognize them, so I'm sorry I had to interrupt, but he  
21 needed to leave the courtroom. Go ahead.

22 BY MR. HAYSBERT:

23 Q. Before the accident, Dr. Haysbert, did you sometimes give  
24 interviews and speeches for your job?

25 A. Yes. Often.

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1 MR. HAYSBERT: If I may, Your Honor, I'd like to  
2 show a short clip of Dr. Haysbert before the accident.

3 THE COURT: Is it listed in your exhibits?

4 MR. HAYSBERT: Your Honor, this would fall under  
5 the P24 -- I'm sorry, P15, the demonstrative evidence.

6 THE COURT: P15?

7 MR. HAYSBERT: I believe so, Your Honor.

8 THE COURT: P15 says material/guidance regarding  
9 TBI.

10 MR. HAYSBERT: P16.

11 THE COURT: 16 is other demonstrative and  
12 illustrative materials, charts, summaries, evidence and  
13 PowerPoint presentations, but those have not been admitted,  
14 and they haven't been shown to the Court.

15 MR. HAYSBERT: Your Honor, we could show them to  
16 the Court. We will just move on.

17 THE COURT: All right.

18 BY MR. HAYSBERT:

19 Q. Have you done interviews or speeches since the accident?

20 A. Yes.

21 Q. Have those been scripted?

22 A. Yes.

23 Q. And even with those scripts, have you had difficulty?

24 A. I've practiced and practiced to make sure that once I get  
25 before the audience or group that I'm able to read what I

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1 have on the paper.

2 Q. How do you have to compensate at work now?

3 A. So many things. One of the things I made mention  
4 earlier, I delegate more. I pull in groups for things I  
5 would handle myself. I make it a group assignment. This  
6 recent, two weeks ago, we are getting ready to revise our  
7 handbook. That's something I usually do. My supervisor  
8 years ago, when I started at Hampton, the two of us wrote the  
9 handbook.

10 I know I can't do that anymore, so I put together a  
11 committee of faculty members availing to do what I used to do  
12 and take it through the process. So those are -- that's one  
13 of the recent examples of what I do to get things done now.  
14 I take notes. I change my schedule. I have people that --  
15 what I know I can commission them, so I can just listen. I  
16 have those meetings where I know that it's going to require  
17 some complex thinking, and I'm likely to forget what is said  
18 in the middle of that conversation, which happens to me often  
19 now.

20 Then what I do is to have someone else there with me  
21 taking the notes of the minutes, and I didn't do any of that  
22 before. I didn't need to. But I know I have to do it now.  
23 I have my colleagues to send me, if I get a question from an  
24 agency that's difficult, requires a lot of complex thinking,  
25 processing and analyzing, I'll send it out and ask my

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1 colleagues, "Give me your thoughts on this," something like  
2 that, so that then I get their thoughts, which helps me to  
3 formulate the best response for the institution, because  
4 while I'm in the position I'm in, my colleagues are still  
5 professionals, and I respect them as such.

6           So, again, things that I would ordinarily do myself,  
7 I rely quite a bit on them, because they are professionals.  
8 So my thought is just get the work done, and that's what I've  
9 been endeavoring to do, compensate as much as I can by not  
10 letting people know. It is not something you go around and  
11 tell people I don't process like I used to. I don't remember  
12 like I used to. I may forget the words you are telling me  
13 that are important.

14           So I don't, you know -- I don't tell people that. I  
15 don't tell anybody that. That's not voluntary information.  
16 What I still try and do is my job, and I try and do it well  
17 with the help of my colleagues that are helping me. As I  
18 said, I delegate to them things that I would ordinarily do  
19 myself, but I know I can't do it at the same level, and that  
20 same level is still required, and as I continue to go on,  
21 then it's getting worse. It's not getting any better, and I  
22 know that.

23           There is no magical pill I know about that can make  
24 me well again, so I do what I can do, and as I said, I  
25 decided to retire. I don't want anybody to retire me.

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1 THE COURT: When did you make that decision?

2 THE WITNESS: I made that decision sometime last  
3 year.

4 THE COURT: When are you scheduled to retire?

5 THE WITNESS: I've spoke with my president, and  
6 it's difficult to find a person, I want to say -- I'm not  
7 the only person who has worked as hard as I have, but I  
8 served my institution a long time, so I've spoken with him,  
9 and this is my last contract.

10 THE COURT: Go ahead.

11 BY MR. HAYSBERT:

12 Q. Dr. Haysbert, why are you putting yourself through all of  
13 this?

14 A. Because as I said earlier -- I do apologize for my lack  
15 of compulsion. As I said earlier, I have a right to advocate  
16 for myself, as everybody in here has, and what started out to  
17 be a beautiful day changed my life, and I think that Outback  
18 Steakhouse ought to be more responsible.

19 MR. MCGAVIN: Objection, Your Honor. Relevance.

20 THE COURT: I overrule. That's her opinion, and  
21 fact witnesses can't give opinions, and it ultimately will  
22 be the jury's decision as to whether there is liability or  
23 not pursuant to the facts in the case and the law as given  
24 by the Court.

25 THE WITNESS: I don't know what all that means but



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1     okay. I just want to advocate for myself. That's what I'm  
2     trying to do, advocate for me and anybody else that falls in  
3     the same situation. That's what this means to me today.

4     BY MR. HAYSBERT:

5     Q. Just, if you could state in simple terms, do you feel  
6     like the quality of your life has lessened and how so?

7     A. Yes. The quality of my life has lessened because I'm  
8     always trying to get away from things and people because I  
9     don't want anybody to know that I'm not the JoAnn Haysbert  
10    that I once was. I just don't want them to know. So that  
11    was, in itself, is a lessen of quality of one's life. I used  
12    to go to church three times a week. I go once. I just -- I  
13    guess I don't want to be found out. And so, yes, it has  
14    lessened tremendously.

15    Q. Just to go back to a point you made earlier about how you  
16    prepare for speeches after the fall. How did you prepare for  
17    your speeches and public appearances before the fall?

18    A. I may have made an outline, because, you know, I don't  
19    have to -- when I was a kid, we learned in church to speak as  
20    anybody speaks in church when you're a kid, in the Baptist  
21    church, anyway, that's how I grew up.

22               And so wasn't -- wasn't anything for me to be able  
23    to -- I think in our -- in the classroom because that wasn't  
24    difficult for me because I grew up that way. So before I  
25    could just get on the stand and speak. Now I don't trust

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1 myself with doing that, so I script everything. I read very  
2 well. I still read very well, because I practice enough. I  
3 read it, and I'm convincing, I hope, that maybe somebody  
4 thinks I'm not reading, I don't know, but I'm reading.

5 If I'm not reading, I use a Teleprompter, and, you  
6 know, the Teleprompter just has all the words and flows and  
7 sit there and look like you're in a movie or something, but  
8 you are really reading off the Teleprompter. So that's the  
9 way I do it now.

10 Q. I also want to go back and clarify some testimony. When  
11 you first walked into the Outback Steakhouse, you said there  
12 was a mat there?

13 A. That mat was either there or in front of the -- what you  
14 call it? -- I lose my words sometime -- hostess stand.

15 Q. And were you on the mat at the time that you physically  
16 fell?

17 A. Oh, no. No.

18 Q. Thank you, Dr. Haysbert. There was some testimony  
19 earlier, really not testimony, but that you had experienced a  
20 car accident at some point.

21 A. Yes.

22 Q. Do you recall the year?

23 A. I don't recall the year, but it was about three years or  
24 so -- might have been four -- three or four years after the  
25 fall at the Outback Steakhouse. I was coming --

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1 Q. Without going into the specifics of it?

2 A. I don't remember specifics.

3 Q. I wanted to ask you the effects of it. So let me ask you  
4 the question and you can answer the question for me.

5 A. Okay.

6 Q. So the deficits that you were discussing throughout your  
7 testimony, was this happening before the car accident or did  
8 it start after the accident?

9 A. Before the car accident because the car accident happened  
10 about three or four years after the Outback Steakhouse slip  
11 and fall.

12 Q. And did you hit your head in the car accident or  
13 anything? Describe what injuries you suffered as a result of  
14 the car accident.

15 A. I didn't suffer any injuries. What happened, the police  
16 officer was called. The other person got the ticket, but  
17 when the police officer is called, you have to go to the  
18 emergency room. And so my son took me to -- my oldest son  
19 was visiting with me, took me to the emergency room, and  
20 there I was given -- I don't know what that exam is called, a  
21 scan. I don't know whether it was MRI or CT scan, one of  
22 those two.

23 THE COURT: Again, you need to raise your voice.  
24 You were with a friend?

25 THE WITNESS: No. My oldest son who lives in

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1 Maryland was visiting me the weekend of the accident, of the  
2 car accident, and he took me to the emergency room because  
3 the police officer said I had to go because there was a car  
4 accident.

5 BY MR. HAYSBERT:

6 Q. Thank you, Dr. Haysbert. The MRI or CT scan or CAT scan,  
7 whatever you received, do you recall what the results were of  
8 that?

9 A. It showed that I had -- it showed that I had a brain  
10 aneurysm.

11 Q. And did you follow up with any doctors regarding the  
12 brain aneurisms?

13 A. I think they are -- went -- always go to my primary  
14 physician, but I did go to a doctor, yes.

15 THE COURT: You went to, again? Your voice is  
16 dropping.

17 THE WITNESS: I'm sorry. I went to my primary  
18 physician as well as another doctor. I don't remember that  
19 doctor's name right now.

20 BY MR. HAYSBERT:

21 Q. And did anyone tell you what the cause of your brain  
22 aneurisms were?

23 A. No.

24 MR. McGAVIN: Objection, Your Honor, hearsay.

25 THE COURT: Sustained. But they didn't tell her

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1 any causes?

2 THE WITNESS: No.

3 BY MR. HAYSBERT:

4 Q. Thank you, Dr. Haysbert. Dr. Haysbert, you've indicated  
5 a number of things and that you plan to retire because of  
6 these difficulties. Is there anything else that you would  
7 like to tell the jury that you feel they ought to know about  
8 the slip and fall or anything you want to share with them?

9 A. I was more emotional than I ever planned to be. I think  
10 I have answered -- I've tried to answer the questions that  
11 you asked, and I tried -- I was as truthful as I can be. And  
12 I just want this to be, as I said before, it's an advocacy  
13 for me. I know there is liability on the table. I'm not all  
14 about money. That's what I said. That's not who I am.

15 But I am advocating for me, and every other person  
16 that has a right to do so. When you walk into a restaurant,  
17 you ought to be able to go to a bathroom and come out and go  
18 home without changing your life. That's what I mean.

19 MR. HAYSBERT: No further questions, Dr. Haysbert.  
20 Thank you.

21 THE COURT: We will take a 10-minute recess, and  
22 then we will resume with cross-examination. You can leave  
23 your pads in your chairs. You can just turn them over and  
24 leave them in your chairs.

25 (Jury out at 11:10 a.m.)

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1 THE COURT: Counsel, we will take a 10-minute  
2 recess and then continue with cross-examination.

3 (Recess from 11:10 a.m. to 11:28 a.m.)

4 (Jury in at 11:28 a.m.)

5 THE COURT: All the jurors are back from break, and  
6 we are to proceed with cross-examination of Dr. Haysbert.

7 Mr. McGavin.

8 MR. MCGAVIN: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. MCGAVIN:

11 Q. Dr. Haysbert, do you prefer to be addressed as  
12 Dr. Haysbert? Is that how you prefer, based upon your  
13 education and your training?

14 A. In this setting, that would be fine.

15 Q. Yesterday I spoke of you as Mrs. Haysbert, and I meant no  
16 disrespect, and I will address you in that way for the rest  
17 of these proceedings.

18 A. None intended. That's fine.

19 Q. Thank you. Dr. Haysbert, tell us where you obtained your  
20 undergraduate degree.

21 A. Johnson C. Smith, Charlotte, North Carolina.

22 Q. And when was it that you completed that degree?

23 A. 1969.

24 Q. Then you pursued additional education, I understand.

25 Would you tell the jury about that education or achievement.

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1 A. Certainly. I did further study at the University of  
2 California, San Jose. Earned a master's and a doctorate  
3 degree at Auburn University in Auburn, Alabama.

4 Q. And when did you obtain your doctorate degree?

5 A. Year, 1978.

6 Q. Since 1978, have you always worked in the education  
7 field?

8 A. Yes.

9 Q. When did you first begin -- well, let me lay the  
10 foundation first. I apologize. Are you currently employed  
11 at Hampton University?

12 A. Yes, I am.

13 Q. What is your position?

14 A. I am the executive vice president and provost.

15 Q. And how long have you served in that capacity?

16 A. This is a new title change. I've been at Hampton since  
17 1980. I've had various capacities or served in various  
18 capacities there. I think the last time I took this provost  
19 position was probably 2014.

20 THE COURT: So the provost was 2014, approximately?

21 THE WITNESS: It's a double, dual title.

22 THE COURT: Pardon?

23 THE WITNESS: It's a dual title.

24 THE COURT: And it is?

25 THE WITNESS: Executive vice president and provost.

1 THE COURT: You got that title in 2014?

2 THE WITNESS: The provost title in 2014. It's  
3 always been provost. At one time it was chancellor and  
4 provost. Then it -- it's a lot of titles, executive vice  
5 president at one point, executive vice president/provost at  
6 one point.

7 THE COURT: I just can't hear you. You have to  
8 speak up.

9 THE WITNESS: Executive vice president and provost  
10 at one point, chancellor and provost at one point, and  
11 executive vice president and provost at this point.

12 BY MR. MCGAVIN:

13 Q. Are your job duties different today?

14 A. Some of them are, from when I started, if that's what you  
15 mean.

16 Q. Well, there is a new president at the university, isn't  
17 there?

18 A. Yes, there is a new president.

19 Q. What is his name?

20 A. His name is lieutenant retired -- Lieutenant General  
21 retired Darrell K. Williams.

22 Q. And when did General Williams come to work at the  
23 university or at Hampton University as the president?

24 A. About a year ago.

25 Q. Did he succeed Dr. Harvey?



1 A. Yes, he did.

2 Q. Now, in your job duties that you have under the new  
3 president, have your job duties been reassigned to anyone  
4 else?

5 A. No. My job duties have not been reassigned. My title  
6 has changed.

7 Q. Is it correct that since you assumed the role of either  
8 chancellor or provost and executive vice president in  
9 approximately 2014, through the present, 2023, your job  
10 duties and responsibilities are unchanged?

11 A. The title has changed, and there has been some change  
12 with the duties and responsibilities. As the chancellor,  
13 that person was considered to be the chief operating officer.  
14 Under the new president, there is no chancellor title, and  
15 hence no chief operating officer.

16 THE COURT: But how long have you been the provost?

17 THE WITNESS: The provost has been a title  
18 consistent from 2014, has been a dual title, that's changed  
19 back and forth, chancellor.

20 THE COURT: I understand there's been job titles.  
21 But you've been provost since 2014, and you're still  
22 provost?

23 THE WITNESS: That is correct.

24 THE COURT: In addition to that, you are an  
25 executive vice president?

1 THE WITNESS: That is correct.

2 THE COURT: How long have you been executive vice  
3 president?

4 THE WITNESS: I've held that title more than once.  
5 The last time is currently as of July 1.

6 THE COURT: As of July 1 this year?

7 THE WITNESS: Uh-huh.

8 THE COURT: Executive vice president?

9 THE WITNESS: Uh-huh.

10 THE COURT: And provost?

11 THE WITNESS: That is correct.

12 THE COURT: All right.

13 BY MR. MCGAVIN:

14 Q. Was there a period of time where you served as the  
15 president of a college or university?

16 A. Yes.

17 Q. What college or university?

18 A. Langston University in Langston, Oklahoma.

19 Q. What was the term of your assignment there or your  
20 presidency at Langston University?

21 A. The -- what was -- would you rephrase the question? What  
22 was the what?

23 Q. I was trying to understand when, what years?

24 A. The year?

25 Q. Yes.

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1 A. 2005 through 2011 or '10.

2 Q. Why did you leave there?

3 A. I was invited back to Hampton by Dr. Harvey and desired  
4 to come back at the time that I did.

5 Q. Thank you. In regard to the incident in question at the  
6 Outback Steakhouse in Chesapeake, had you ever been to that  
7 restaurant before?

8 A. I don't recall. I've been to an Outback Steakhouse  
9 before, yes, but I've been to that particular one, I honestly  
10 don't know.

11 Q. Have you been there since?

12 A. No.

13 Q. What did you notice in your previous visits to Outback  
14 Steakhouse about the condition?

15 MR. HAYSBERT: Objection, Your Honor. Calls for  
16 speculation.

17 THE COURT: Are you talking about this Outback  
18 Steakhouse or other Outback Steakhouses?

19 MR. MCGAVIN: Other Outback Steakhouses.

20 MR. HAYSBERT: Withdraw the objection.

21 THE COURT: Go ahead.

22 MR. MCGAVIN: Thank you.

23 BY MR. MCGAVIN:

24 Q. Let me start, just rephrase it for the court reporter.

25 When you went to other Outback Steakhouses, did you recognize

1 what was the composition of the floor?

2 A. No. I don't know what you mean. I don't understand.

3 Q. Do you have hardwood floors at home?

4 A. In some parts of my house, I do, yes.

5 Q. And do you also have carpet?

6 A. Yes, I did.

7 Q. So on the day of this incident, was it May 23, 2018?

8 A. Okay.

9 Q. Is that correct?

10 A. I think that's correct.

11 Q. What day of the week was it?

12 A. I think that's a Friday. I'm not certain, but I think it  
13 was a Friday.

14 Q. Does that make sense since you've traveled the next day  
15 to South Carolina?

16 A. I don't remember what you mean, does it make sense.

17 Q. Does that refresh your recollection that since the next  
18 day --

19 A. I think it was on a Friday because we went to get our  
20 hair done during the week, yes.

21 Q. Thank you.

22 A. Weekday.

23 Q. What were the weather conditions like that day?

24 A. Starting that morning, it was a beautiful day. I think  
25 it was a beautiful day.

1 Q. Did it rain?

2 A. I don't think so.

3 Q. Was the parking lot wet when you arrived at the Outback  
4 Steakhouse?

5 A. I don't recall.

6 Q. Do you recall when you drove to the Outback Steakhouse  
7 from the salon whether you had to use your windshield wipers?

8 A. I don't recall using them.

9 Q. When you exited your car, did you go into the takeout  
10 area or did you go into the main entrance?

11 A. I went into the main entrance to go to the bathroom.

12 Q. Thank you. And your daughter went into the takeout  
13 entrance?

14 A. My daughter was in the car when I left.

15 Q. I see. Did you place an order?

16 A. We placed an order.

17 Q. How?

18 A. The person came out to us.

19 Q. I see. So you were in your car and placed the order from  
20 curbside?

21 A. Correct.

22 Q. When you came out of your car and walked to the front  
23 entrance of the restaurant, did you notice whether the  
24 pavement was wet?

25 A. I do not recall whether the pavement was wet or not.

1 Q. When you reached the front entrance, did you have any  
2 difficulty entering the front entrance?

3 A. No.

4 Q. And when you opened the front doors, did you notice what  
5 the floor was made of in the front entrance?

6 A. It was either -- I think it was carpet.

7 Q. Was the carpet wet?

8 A. Not to my recall.

9 Q. You say you approached the hostess stand, and there was  
10 an African-American woman there that you spoke to; is that  
11 correct?

12 A. That is correct.

13 Q. Did you see Lisa Crosby at that time?

14 A. I do not recall seeing anyone but the one person.

15 Q. Do you recall that person's name?

16 A. No, I do not. Didn't ask.

17 Q. Pardon me?

18 A. I didn't ask the name, and I do not know it.

19 Q. Thank you.

20 A. Uh-huh.

21 Q. All right. Once you made your request to use the  
22 restroom, and the staff person responded, did you notice  
23 anything about the condition of the floor before you stepped  
24 past the hostess stand?

25 A. No, I didn't.

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1 Q. Did you look?

2 A. No. I wasn't looking at the floor.

3 Q. Is it correct you were not looking where you were going  
4 when you fell?

5 A. I was looking straight ahead to where she pointed me to  
6 go, which was to go to the bathroom. So when she said this  
7 way (indicating), that's where my eyes went, this way  
8 (indicating).

9 Q. Is there any reason you couldn't have looked at the floor  
10 that you stepped on before you fell?

11 MR. HAYSBERT: Objection. This is confusing.

12 THE COURT: Go ahead. Overruled.

13 THE WITNESS: I don't know what that means.

14 THE COURT: Repeat your question.

15 MR. McGAVIN: I will.

16 BY MR. McGAVIN:

17 Q. Is there any reason you couldn't have looked at the floor  
18 before you proceeded?

19 A. My question to the hostess was I need to go to the  
20 bathroom. So would that be my intent, that's where my focus  
21 was.

22 Q. Do you wear glasses?

23 A. I do not.

24 Q. Do you wear contacts?

25 A. I do not.

1 Q. How was the lighting in the restaurant when you entered?

2 A. Visible.

3 Q. You don't have any complaints about the lighting, do you?

4 A. No, I didn't have any complaints about the lighting.

5 Q. Was there anything in front of you before you stepped  
6 into the main dining room?

7 A. No.

8 Q. Was there anything that obstructed your vision?

9 A. No.

10 Q. You've indicated you took a step or two forward and fell;  
11 is that correct?

12 A. That's correct.

13 MR. HAYSBERT: Objection. This is confusing, Your  
14 Honor.

15 THE COURT: I do not find it confusing. They are  
16 straightforward questions. I overrule the objection.

17 MR. HAYSBERT: Your Honor, we have no idea what he  
18 is talking about one or two steps after the hostess stand or  
19 after she reached the front entrance.

20 THE COURT: Overruled.

21 MR. HAYSBERT: It's confusing and it's not  
22 specific.

23 THE COURT: Overruled. If it is confusing, then  
24 the jury can decide it's confusing and put whatever weight  
25 they want on the testimony. The Court doesn't find it



1 confusing. Go ahead. I don't know where you were at this  
2 point, but go ahead.

3 MR. MCGAVIN: Thank you, Your Honor.

4 BY MR. MCGAVIN:

5 Q. You recall that you had -- you felt some carpet under  
6 your foot; is that right?

7 A. Yes.

8 Q. And then you --

9 A. Before the fall.

10 Q. Yes, ma'am. And then you say that you moved into the  
11 main dining room; is that right?

12 A. I took one or two steps in the direction the lady told me  
13 the bathroom was, yes.

14 Q. Was that into the main dining room?

15 A. Yes.

16 Q. Had -- pardon me?

17 A. Yes.

18 Q. I'm sorry. Thank you.

19 And when you took those steps, did you happen to feel  
20 what was underfoot?

21 A. I felt a slick floor.

22 Q. Well, was it carpeted?

23 A. No, it wasn't carpeted when I took the steps.

24 Q. Did you happen to notice whether it was wood or tile or  
25 marble? Did you notice?

1 A. No.

2 Q. You never looked?

3 A. I wasn't looking at the floor. I was looking the  
4 direction I was going to go.

5 Q. Correct. And so, therefore, you wouldn't know if  
6 anything was on the floor or had been spilled or if there was  
7 a Bloomin' onion on the floor since you didn't look?

8 A. No, I wouldn't know.

9 Q. And when you fell, you say you fell on your left side; is  
10 that correct?

11 A. That's correct.

12 Q. And you say you slammed your head against the floor?

13 A. That's correct.

14 Q. And that, I take it, you fell against something that was  
15 not carpeted?

16 A. I slammed my head on the floor. The floor was not carpet  
17 that I fell on.

18 Q. That's what I'm getting at, yes. Thank you.

19 A. Okay.

20 Q. When you did, were you wearing a hat that day as you are  
21 today?

22 A. I wear a hat every day, yes.

23 Q. And you do that for religious reasons, I understand?

24 A. That is correct.

25 Q. And what about your hat? Was it still perched upon your

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1 head after your fall?

2 A. I don't even recall.

3 Q. And were you wearing the same hat that you're wearing  
4 today, do you recall?

5 A. No.

6 Q. Do you recall that Ms. Crosby -- you wanted to say  
7 something?

8 A. No, I remember that I should be looking at the jury since  
9 I'm addressing them. I'm just looking at the jury.

10 Q. All right. As you will. So, Dr. Haysbert, do you recall  
11 that Ms. Crosby was the first person to render aid to you?

12 A. I do recall Ms. Crosby, yes.

13 Q. And do you recall that she was just a step or two in  
14 front of you when you fell?

15 A. No.

16 Q. Do you know where she came from?

17 A. I do not.

18 Q. And when you got your wits around you, as you say, did  
19 you sit up on your rear end, so to speak, or did you lay on  
20 your side?

21 A. I was laying -- when I came to myself, I was on my side.  
22 As I said, I slammed my head, and I remember opening my eyes  
23 to glimpses of shoes or something. That's what's in my  
24 memory.

25 Q. I understand, but did you sit up or did you stand up?

1 A. People helped me up. I don't recall any particulars of  
2 whether -- how I was seated. I know I fell down on the left  
3 side.

4 Q. You're indicating and showing us leaning to the left as  
5 you did there; is that right?

6 A. People helped me up.

7 Q. Thank you. All right. And you did not break any bones,  
8 did you?

9 A. No.

10 Q. Now, in the aftermath did Ms. Crosby help you to your  
11 chair or to a chair?

12 A. Ms. Crosby and some other people helped me to a chair.  
13 As I said, I don't remember how many. It seemed like a lot  
14 of people. It may not have been, but that's the way it  
15 appears, yes, she was one of those, as I recall, because I  
16 have vision of her sitting at the chair on -- next to me.

17 Q. All right. Now, in regard to the dress that you were  
18 wearing, I think you said a skirt or a dress?

19 A. It was a skirt.

20 Q. And a top; is that right?

21 A. Uh-huh.

22 Q. Is that a yes?

23 A. That's a yes. I'm sorry.

24 Q. Thank you. I'm doing that for the reporter, not to be  
25 difficult.

1 A. Okay.

2 Q. Thank you. Were you wearing a sweater?

3 A. It's a jacket.

4 Q. Jacket.

5 A. Suit jacket.

6 Q. Did you notice whether or not your clothes were wet or  
7 soiled or torn or otherwise in disarray?

8 A. I did not notice, have no memory of that.

9 Q. You don't recall your left side being wet or greasy or  
10 having any foreign substance on it, do you?

11 A. I don't recall. I don't -- I didn't even look or think  
12 about my clothes, to be honest with you. I did not.

13 Q. Well, but in terms of after the fact, when you were  
14 assessing what had happened to you, did you notice any --

15 A. No, I did not.

16 Q. -- anything on your clothes that had not been there  
17 before?

18 A. I did not notice anything on my clothes.

19 Q. Were your shoes still on your feet?

20 A. Yes.

21 Q. Were you carrying a lady's handbag when you came in?

22 A. No.

23 Q. A phone or some kind of a -- I don't know what -- some  
24 kind of a bag of some kind?

25 A. I don't remember carrying anything.

1 Q. Did you have any cuts on your left arm, on your hand, on  
2 your hip, on your leg?

3 A. I had bruises and contusions all the way here  
4 (indicating).

5 Q. And for the record, I'd like to describe where you have  
6 been indicating for the court reporter. Are you indicating  
7 placing your -- let me finish, and I'll let you -- ask you to  
8 agree or disagree, if you don't mind.

9 A. Okay.

10 Q. Were you indicating that you were touching your left  
11 shoulder down your left arm; is that what you're indicating?

12 A. That's what I'm indicating, yes, sir.

13 Q. Thank you. Did you have any visible sign of injury to  
14 your head?

15 A. I said I wasn't looking at my head at the time. Later on  
16 there was a picture of a scar that was on my left side.

17 Q. And how large was that?

18 A. Maybe like this (indicating). I'm guessing -- left me  
19 put that into words. I'm guessing the size of a nickel.

20 Q. All right. Did you have any bleeding?

21 THE COURT: Are you talking about a circular scar  
22 or a length?

23 THE WITNESS: Circular scar.

24 THE COURT: A scar?

25 THE WITNESS: What --

1 MR. HAYSBERT: She said scar.

2 THE COURT: She said scar, and then she said a size  
3 of a nickel, and I'm asking her was it a circular scar. Was  
4 she talking about the length of the scar?

5 MR. HAYSBERT: She said circular.

6 MR. MCGAVIN: Circular.

7 THE COURT: That's what she said.

8 THE WITNESS: Yes, you're correct, Your Honor.

9 THE COURT: All right.

10 BY MR. MCGAVIN:

11 Q. Did you have any cut or bleeding to your head?

12 A. Did not have any bleeding to my head, no, sir.

13 Q. And when you went home that evening or the next day when  
14 you were preparing your hair or preparing washing your face  
15 or brushing your teeth, did you notice anything on your head?

16 A. I didn't notice any -- I noticed the scar, but I  
17 didn't -- oh, you said my head?

18 Q. Yes, ma'am.

19 THE COURT: When you say a scar, I'm confused.

20 THE WITNESS: I don't know how to describe it.

21 THE COURT: There was a scar already there on the  
22 day of the injury? Maybe I'm thinking of a scar is  
23 something that, for instance, you have surgery, and there's  
24 a scar on you in your skin. Was it a scar or a contusion?  
25 A contusion would be a bruise or tissue.

1 THE COURT: It was not a scar. I was following his  
2 terminology. It would be more contusion.

3 MR. MCGAVIN: Thank you. Thank you.

4 BY MR. MCGAVIN:

5 Q. All right. Now, in your extensive experience, look, as I  
6 understand it, you wear heels all the time?

7 A. Yes.

8 Q. The heels that you are wearing that you displayed you're  
9 wearing today, can you give us an estimate of about how high  
10 that heel is?

11 A. I think it's about two inches.

12 Q. Are these shoes you've worn previously, in other words,  
13 before that day?

14 A. Yes.

15 Q. How frequently?

16 A. Well, I can't tell you how frequently. I wear them  
17 fairly frequently.

18 Q. Have they been re-soled since that time five years ago?

19 A. No, they have not.

20 Q. And have they -- have you worn them since the day of this  
21 incident?

22 A. Yes, I have.

23 Q. I want to display to you an exhibit that's been  
24 premarked, and I would ask with the assistance of the team  
25 here, I'd like to display this to you but not to the jury.



1 All right. At this time. So this is for  
2 identification only, Defendant's Exhibit Number 2. Do you  
3 recognize what is shown in Defendant's Exhibit Number 2?

4 A. My shoes that I have on today.

5 Q. And those are the same shoes, are they not?

6 A. Absolutely.

7 Q. And did you know that Ms. Crosby took a picture of those  
8 shoes on the day of your incident on May 23, 2018?

9 A. I did not know she took a picture.

10 Q. All right. So when you got yourself up and exited the  
11 restaurant, did you walk over the same area where you had  
12 fallen on the way in?

13 A. I walked out of the restaurant.

14 Q. Yes.

15 A. Whether it was the very same area -- I went out the same  
16 door, as I recall.

17 Q. Well, did you recall any assistance, anyone hold you as  
18 you exited out of the restaurant?

19 A. My daughter and I walked out together, so I don't know --  
20 I recognize these are my shoes. I don't know anybody took  
21 them. I don't know when they took the picture. I just  
22 recognize they are my shoes, yes. I recognize the piece of  
23 the --

24 Q. I'm going a bit past that, though, Dr. Haysbert. Once  
25 you got up --

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1 A. Uh-huh.

2 Q. -- and stood up to leave, did you have any difficulty  
3 with the floor?

4 A. I don't recall having difficulty with the floor, so  
5 someone walking with me. My daughter helped me out. My  
6 daughter walked out with me.

7 Q. I understand she walked out with you, but was she holding  
8 you to make sure that you would not fall again?

9 A. Holding me, she was close to me. Yes, she was very close  
10 to me. Whether she had her arms around me or not, I don't  
11 recall.

12 Q. Thank you.

13 MR. MCGAVIN: So, Your Honor, at this time  
14 Defendant's Exhibit 2 is for identification only, and I will  
15 reserve the right to offer it into evidence in my case at  
16 the appropriate time.

17 THE COURT: Let me ask Dr. Haysbert one question.  
18 Is that the skirt that you had on that day?

19 THE WITNESS: Yes, it is. Same one I had on  
20 yesterday.

21 THE COURT: Pardon?

22 THE WITNESS: Yes, ma'am. It is the same skirt  
23 that I had on that day.

24 THE COURT: Go ahead.

25 MR. MCGAVIN: Thank you, Your Honor.

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1 BY MR. MCGAVIN:

2 Q. I'm going to ask you to take a look, and I'm keeping my  
3 voice up for the court reporter as I move, so I'm not  
4 yelling, Your Honor. I'm trying to make sure that we hear.

5 I'm going to show you what's been marked as  
6 Defendant's Exhibit Number 1 for identification. I'd ask the  
7 clerk to make that available to the witness and the Court and  
8 counsel, of course. Do you have that displayed for you,  
9 Dr. Haysbert?

10 A. Yes.

11 Q. Do you recognize Defendant's Exhibit Number 1 as a  
12 photograph of the floor in the area where you fell on May 23,  
13 2018?

14 A. I can't say that that's the floor where I fell or not.

15 Q. Well, even after you fell, did you happen to inspect the  
16 floor to see either was it marble, was it wood, was it  
17 linoleum, was it tile?

18 A. Sir, I did not inspect the floor after I fell.

19 Q. You didn't -- I'm sorry, were you finished?

20 A. Yes. I said, no, sir, I did not inspect the floor after  
21 I fell.

22 Q. Let me ask that a slightly different way.

23 A. Okay.

24 Q. Did you look at the floor after you fell to try to  
25 understand if there was something wrong with the floor that

1 caused your fall?

2 A. No, I did not inspect the floor. My thought was what  
3 happened, and didn't turn to the floor and say -- no, I  
4 didn't.

5 Q. So then in regard to Defendant's Exhibit Number 1, is it  
6 correct to say that you are not able to identify whether or  
7 not that floor is -- that photograph is a fair and accurate  
8 depiction of the floor as it appeared on May 23, 2018?

9 A. That is correct. I cannot identify that as what the  
10 floor looked like that day.

11 MR. MCGAVIN: Thank you. Tammy, that's what I need  
12 for now. Thank you.

13 BY MR. MCGAVIN:

14 Q. On the evening that this occurred, could you tell me  
15 approximately what time it was?

16 A. It had to be somewhere between 5:00 and 6:00, because  
17 assuming our appointments were in the late afternoon about  
18 3:00, something like that.

19 Q. How far were you from your residence at that time?

20 A. Hampton from Chesapeake, as I said earlier, I believe I  
21 did, it is about a 20- or 30-minute drive, depending on the  
22 traffic.

23 Q. And where is it that you live? Do you live in Hampton?

24 A. I live in Hampton.

25 Q. And how long have you lived there?

1 A. Since 1980, except for the years I lived in Oklahoma.

2 Q. Okay. Let's talk about what happened, then, the next  
3 day, which would be Saturday. Is that the day that you and  
4 your daughter traveled to South Carolina?

5 A. I believe it was that next day or the next -- either the  
6 next day or the day after, one or the other. I can't be  
7 absolutely sure, but that day or the following day, so it  
8 would have been that Saturday or that Sunday.

9 Q. Who drove to South Carolina?

10 A. My daughter did.

11 Q. How long a drive is it to your mother's residence?

12 A. Five hours. It's about five hours.

13 Q. What town is that?

14 A. Kingstree.

15 Q. Say again, please.

16 A. Kingstree, K-i-n-g-s-t-r-e-e.

17 Q. Is that where you were born and raised?

18 A. That's where I was born and raised, yes.

19 Q. And did you say your mother is still living?

20 A. My mother is 95 years old.

21 Q. And at the time of this visit was there an emergency that  
22 you were attending to or was it a visit to visit a loved one?

23 A. It was a planned visit to visit a loved one, yes.

24 Q. In other words, I may have said that she was in poor  
25 health and needed your help in opening, and I think I stand

1 corrected. This was just a visit to see your mom who you  
2 care for deeply, a planned visit?

3 A. Yes.

4 Q. Is there any reason you couldn't have postponed that  
5 visit?

6 A. Not for me because my mother at 90, there are only three  
7 of us. When I made the commitment to her, I try and make  
8 sure that happens, try and get there. So, no, I guess you  
9 can always, in retrospect or afterwards, think you could have  
10 done it differently, but at that time, I'm thinking my mother  
11 is waiting for me, expecting me, so, as I said, my daughter  
12 said, "Do you think you can make it?" I said, "Let's try."

13 Q. You didn't want to disappoint her?

14 A. I did not.

15 Q. All right. And what did you do on your visit to South  
16 Carolina with your mother?

17 A. Well, most of the same thing we always do. Sit, chat,  
18 eat.

19 Q. When you arrived in South Carolina in Kingstree, other  
20 than visiting at the home, did you go anywhere?

21 A. Well, we went to -- we went -- where else did we go? I  
22 don't recall where else we went on that visit because it was  
23 a primary thing. I know we went to the urgent care place.

24 Q. Right. I'll ask you about that in just a minute, but did  
25 you go anywhere else? For example, did you go to the grocery

1 store and buy groceries for your mom or was there a  
2 restaurant that she liked that you went to?

3 A. No. We didn't do either of those things.

4 Q. Did you have other family there in South Carolina?

5 A. At that time, I wouldn't say family. My mother has  
6 distance relatives that lives in the area, yes. I have one  
7 sister, one brother, and they did not live in that area.

8 Q. Thank you. You mentioned that you went to the urgent  
9 care. When you went to the urgent care, isn't it true that  
10 you did not report any loss of consciousness or any head  
11 injury?

12 A. I don't think that that's correct when you said head  
13 injury. I reported what happened to me, and, yes, from loss  
14 of consciousness. I told them what happened to me.

15 Q. Let me see if I can refresh your recollection about that  
16 visit.

17 A. Okay.

18 Q. So I would ask, with the assistance of the court officer,  
19 to show this to the witness and not display this to the jury  
20 at this time.

21 MR. HAYSBERT: Your Honor, before he displays that,  
22 he has not established that she has seen this document  
23 before. We don't know what this is.

24 THE COURT: We talked about the records before.  
25 It's her medical record, and he's entitled to examine her.

1 She said she went to the clinic, and this is the medical  
2 record, as I understand it, that was subpoenaed. So I  
3 overrule the objection.

4 MR. HAYSBERT: Your Honor, if I may, he doesn't  
5 actually -- there is a difference between having a medical  
6 record from that and what she talked to the doctors about.

7 THE COURT: Well, he's asking to refresh her  
8 recollection.

9 MR. HAYSBERT: Of what she talked to the doctors  
10 about or the medical record itself?

11 THE COURT: Overrule your objection. Go ahead.  
12 BY MR. MCGAVIN:

13 Q. Dr. Haysbert, do you have displayed in front of you a  
14 record from -- I'm going to zoom out on this -- a record from  
15 Medcare dated May 25, 2018?

16 A. Yes.

17 Q. Does this refresh your recollection that you went to  
18 Medcare in South Carolina on May 25, 2018?

19 A. Yes. Remind me of the exact name of the place, yes.

20 Q. Just to talk about it a little bit. Is it correct that  
21 you're 5'6" tall?

22 A. Yes.

23 Q. And weigh about 150 pounds at the time?

24 A. Yes. I still do.

25 Q. All right. You say still maintain that same weight, of



1 course?

2 A. Uh-huh.

3 Q. And do you recall that when you were there you talked  
4 about left wrist pain, shoulder pain, a contusion to the  
5 shoulder, and contusion of the wrist?

6 A. I see that that's what their diagnosis included, that's  
7 what it reads there, but I did tell them all about what  
8 happened to me.

9 Q. All right. So you're saying that they failed to  
10 record --

11 A. Everything that I said.

12 Q. -- including you told the folks at Medcare that you had a  
13 loss of consciousness?

14 A. I just told them what happened to me. I may have said  
15 that. I don't recall all the words. But I did tell them  
16 that I fell and slammed my head. That's what I remember. I  
17 did tell them all that happened.

18 THE COURT: Let her finish.

19 MR. MCGAVIN: I'm sorry, Your Honor.

20 THE COURT: Can you repeat the last.

21 THE WITNESS: Yes. I said that I did tell them  
22 what happened to me at Outback Steakhouse to include the  
23 fact that I fell and slammed my head on the floor, yes.

24 MR. HAYSBERT: Your Honor, if I may, the entire  
25 exhibit is not showing.

1 THE COURT: He's moving it down. You've seen the  
2 exhibit. You know what is. The jury is not looking at it.  
3 It's just us. Go ahead.

4 MR. MCGAVIN: Thank you.

5 BY MR. MCGAVIN:

6 Q. Did you have any diagnostic studies done on your head  
7 like a CAT scan or an MRI done of your brain?

8 A. Not at that place, no, did not.

9 Q. And did you complain that you had a contusion to your  
10 head?

11 A. I didn't know I had a contusion, what you talking about  
12 the slamming together thing. They would have -- no, they  
13 wouldn't have seen it. They didn't ask me to take off my  
14 hat.

15 Q. I'm sorry. I didn't hear you.

16 A. I actually did not. I was trying to think, to try and  
17 remember. I don't remember all that I said to them. The  
18 details, I did tell them what had happened to me, that I  
19 slipped and fell and slammed my head. I did tell them that.

20 Q. Is it correct, Dr. Haysbert, that you have full memory up  
21 until the time of falling, in other words, of the events?

22 A. I had --

23 MR. HAYSBERT: Objection. This is calling for a  
24 narrative, and it's open and speculative.

25 THE COURT: Overruled. Go ahead.

1 THE WITNESS: Would you rephrase your question?

2 BY MR. MCGAVIN:

3 Q. I'll try. In terms of the events just before you fell,  
4 is it correct that you do not have a gap in your memory?

5 A. Of events before I fell, that's correct.

6 Q. And then you say there was some period of time where you  
7 were dazed and you believe that you lost consciousness?

8 A. I know I lost consciousness because when I came to myself  
9 and opened my eyes.

10 Q. Is it also correct that once you opened your eyes, you  
11 have a memory of the events which follow, including speaking  
12 to Ms. Crosby, being moved to a chair, people coming to your  
13 aid, and then eventually leaving the restaurant?

14 A. I do have memories of what I shared with you --

15 Q. Thank you.

16 A. -- today, yes.

17 Q. Thank you.

18 THE COURT: Let me ask you one question. Go back  
19 to where you had it.

20 MR. MCGAVIN: Yes, Your Honor.

21 THE COURT: So you complained about your left wrist  
22 pain, your left shoulder pain, your contusion on your left  
23 shoulder, and the contusion of your left wrist. Was there  
24 any mention of a contusion you said you saw that night after  
25 the fall on your head?

1 THE WITNESS: I told them all. What they wrote  
2 down, I didn't remember. I do remember this now that I'm  
3 seeing it, but I explained that to the lady that was the  
4 intake person, that I -- again, I didn't explain to her in  
5 the description of I had a contusion on my head. I  
6 explained to her that I fell, slammed, hit my head. That's  
7 how I explained it.

8 THE COURT: All right.

9 MR. McGAVIN: Thank you. Your Honor, with the  
10 Court's permission, I'm going to keep my voice up because I  
11 need to move through three or four exhibits at the document  
12 camera.

13 THE COURT: That's fine.

14 MR. McGAVIN: Thank you.

15 BY MR. McGAVIN:

16 Q. Dr. Haysbert, I want to try to refresh your recollection  
17 about this issue of dizziness. Isn't it true that the  
18 vertigo and dizziness first appeared on or about February 3,  
19 2017, approximately 16 months before this incident?

20 A. I don't remember the date it first appeared. It was  
21 before. I did have vertigo before this incident. When that  
22 was, I don't remember.

23 Q. I'd like to try to refresh your recollection about that,  
24 and I'm going to display to you a record from Divine Health  
25 Care, LLC. Do you recognize that?

1 A. I recognize my name, Divine Health Care, yes.

2 Q. Is Devine Health Care the same facility where  
3 Dr. Chinniry worked before his death?

4 A. Yes.

5 Q. And do you see that in the highlighted section on  
6 February 3, 2017, that you were -- you visited Divine Health  
7 Care, LLC?

8 A. Uh-huh. Yes.

9 Q. Thank you. And if I scroll down a bit further, you will  
10 see -- and I'm asking you, does this refresh your  
11 recollection that on February 3, 2017, you were awakened from  
12 sleeping with a feeling that the bed was swimming and you had  
13 difficulty with fatigue and dizziness and felt nausea?

14 A. Yes.

15 Q. So does this now refresh your recollection that the  
16 dizziness came on about 16 months before?

17 MR. HAYSBERT: Objection, that is not her  
18 testimony. He mischaracterized her testimony.

19 THE COURT: He asked her does it refresh her  
20 recollection. Go ahead.

21 MR. MCGAVIN: Thank you.

22 BY MR. MCGAVIN:

23 Q. Does that refresh your recollection?

24 A. I see that it states here that I said to Dr. Chinniry, on  
25 the date that you gave, that I awoke from sleeping feeling --

1 with my head swimming, yes.

2 Q. All right. And does this also refresh your recollection  
3 that the dizziness had been persisting, and you were having a  
4 problem with vertigo with fast movement?

5 A. I see as that's written there, yes.

6 Q. So when you reported to Dr. Chinniry that the dizziness  
7 was persisting, were you reporting that it had been ongoing  
8 for a while?

9 A. No. I was reporting that if he asked me are you having  
10 this more than once, you know, like -- in two or three days,  
11 the bout of vertigo that I had, as I recall, that I shared  
12 with you earlier, I did have it, and he had me to stay home  
13 for a couple of days. I think it lasted -- he had me out of  
14 work for three or four days. So once that bout of vertigo  
15 ended, I didn't have it anymore.

16 THE COURT: So but this is before your fall?

17 THE WITNESS: Yes. I had the vertigo before the  
18 fall.

19 THE COURT: So you had the vertigo before the fall,  
20 and this visit --

21 THE WITNESS: -- is before the fall.

22 THE COURT: This visit where you related that you  
23 awakened from sleeping with a feeling that your bed was  
24 swimming, and you were having the dizziness persisting and  
25 the problem with vertigo with fast moment, this was in

1 February of what year? February of 2017?

2 THE WITNESS: That's what this says, yes. It was  
3 before the fall at Outback Steakhouse, yes.

4 THE COURT: Let me ask you one other thing. I'm  
5 recalling. I didn't make a note of it, and if I'm wrong,  
6 you can certainly tell me. Did you say you'd only had this  
7 one incident?

8 THE WITNESS: Uh-huh.

9 THE COURT: Of vertigo?

10 THE WITNESS: Yes.

11 THE COURT: So this one incident, then, was before  
12 the fall, not after the fall?

13 THE WITNESS: That's correct.

14 THE COURT: All right.

15 THE WITNESS: That is correct.

16 BY MR. MCGAVIN:

17 Q. Do you say that the vertigo that you reported to  
18 Dr. Chinniry went away within a day or two?

19 A. I said that he put me out of work for a day or two, and,  
20 yes, it did. I don't think that vertigo last any more than  
21 when I went back to work, and I think he had me out of work  
22 for three or four days. I don't know if that's on here. It  
23 might be. Scroll up.

24 Q. Do you make a distinction between vertigo and dizziness?

25 A. Vertigo and dizziness kind of works together. But for me

1 I also was nauseated and regurgitated a lot.

2 Q. I appreciate that, and I'm sorry you had that, but when  
3 you used the term "vertigo" and say it went away, did you  
4 continue having dizziness?

5 A. No.

6 Q. You did not?

7 A. No. Dizziness to the extent that this was.

8 Q. Well, that's not what I'm asking you, to the extent. Did  
9 you persist to have dizziness with fast movement after  
10 February 2017?

11 A. No, sir.

12 Q. Thank you. Let me see if I can refresh your  
13 recollection. Do you recall going back to Dr. Chinniry on or  
14 about February 13, 2017, about ten days later?

15 A. I may have.

16 Q. All right. I'm going to show you a record from February  
17 13, 2017, from Divine Health Care. Do you see that?

18 A. I see it.

19 Q. And this is a record for you, Dr. Haysbert, yes?

20 A. Yes.

21 Q. Thank you. And do you see -- take a minute and read the  
22 highlighted section, if you would, please, to yourself.

23 A. Okay.

24 Q. Do you see that you reported back to Dr. Chinniry, and  
25 the dizziness was persisting with fast movement, but you had



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1 been feeling much better but still had slight  
2 lightheadedness? Did you report that or does this refresh  
3 your recollection that you reported that?

4 A. Now, I accept what is written there because if  
5 Dr. Chinniry said it, I reported it at the time. And do I  
6 remember all this, no.

7 MR. HAYSBERT: Objection, Your Honor.

8 THE COURT: What did you say, neurologist?

9 THE WITNESS: I said Dr. Chinniry.

10 THE COURT: Your voice trailed down. I just didn't  
11 hear the end of your answer.

12 THE WITNESS: Okay. The question again then so I  
13 can try to figure out what the end was.

14 BY MR. MCGAVIN:

15 Q. Sure. I believe that you were saying, correct me if I'm  
16 wrong, and counsel will correct me, but I believe you were  
17 saying if Dr. Chinniry wrote it, it would be something that  
18 you would accept, and then you were saying something about  
19 Dr. Chinniry, and with the objection, I'm sorry I did not  
20 quite hear what you said.

21 A. I'm trying to read what he said, too.

22 Q. All right.

23 A. I read here, I don't know what he meant when he said the  
24 dizziness is all blood resolved.

25 Q. I suggest that's a typo, that he was saying all but

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1 resolved.

2 A. I don't know.

3 MR. HAYSBERT: Objection. I would object to the  
4 suggestion. The doctor is not here.

5 THE COURT: The doctor is not here, but she was  
6 there.

7 THE WITNESS: And that's what I'm saying, he wrote  
8 this.

9 THE COURT: Overrule the objection. If she recalls  
10 or if she doesn't recall.

11 THE WITNESS: I do not.

12 THE COURT: She was there, and this is to refresh  
13 her recollection. In any event, then, Dr. Chinniry would be  
14 unable if he is deceased. In any event, all this is, is to  
15 refresh her recollections at this point. So you did go back  
16 to Dr. Chinniry about ten days later?

17 THE WITNESS: I do not recall that, but if it's  
18 written there, I went back to him, yes. I don't remember  
19 every time I visited him. But I did go to him. If he  
20 requested that I come back, I went back to see, yes.

21 BY MR. MCGAVIN:

22 Q. I'm showing you a record from March 13, 2017, from the  
23 Divine Health Care for purposes of refreshing your  
24 recollection, Dr. Haysbert.

25 A. Uh-huh. It seems like a continuation of a record to me,

1 that it talks about the same thing every time.

2 Q. Do you recall that you reported, as I've noted with my  
3 parenthesis there, to feeling much better but continuing with  
4 lightheadedness but the dizziness was all but resolved?

5 MR. HAYSBERT: That is not what the medical records  
6 says. It does not say all but resolved.

7 THE COURT: It says, "All blood resolved."

8 MR. HAYSBERT: The doctor is not here to determine  
9 what he meant by it at all, and he can't give a suggestion.

10 THE COURT: I overrule your objection. The jury  
11 can make whatever assessment they want. He is showing her a  
12 medical record, and she did go back again, and regardless,  
13 let's just say this says, You have slight lightheadedness.  
14 She reported the dizziness is resolved.

15 THE WITNESS: And that's what I'm saying, it's no  
16 headaches, no vertigo, no injury.

17 BY MR. MCGAVIN:

18 Q. Correct. Does that refresh your recollection at that  
19 time?

20 A. No. I'm just reading what I see here.

21 Q. Thank you.

22 A. Uh-huh.

23 Q. So do you recall that the vertigo returned shortly before  
24 the incident in question?

25 A. No, I do not.

1 Q. Let me see if I can refresh your recollection on that  
2 point. I'm going to show you a record from March 28th, 2018,  
3 from Divine Health Care, and I ask you whether or not this  
4 refreshes your recollections at that time?

5 MR. HAYSBERT: Your Honor, the complete document is  
6 not being shown. There is a portion of it that is not being  
7 shown that's extremely important to this record for her to  
8 be able to review in order to properly answer this question.

9 THE COURT: Three things. Number one, you've seen  
10 the record, the full record. It's on the screen, and  
11 oftentimes you can't get the full record on the screen. To  
12 the extent you want to show and ask something about this  
13 record, you can in redirect. So if there is something not  
14 being shown that the defense attorney chooses not to and to  
15 ask about, then you show it and ask about it. That's the  
16 way it's done.

17 MR. HAYSBERT: Thank you, Your Honor.

18 BY MR. MCGAVIN:

19 Q. The question for you, Dr. Haysbert --

20 A. Yes.

21 Q. -- do you recall that you came back on March 28th, 2018,  
22 about a year later with dizziness persisting?

23 MR. HAYSBERT: Objection, Your Honor. Same  
24 objection. This record does not reflect that that's what  
25 she was doing, and she was going back with another -- yet

1 another incident of dizziness. This appears to be a  
2 continuing record that keeps going forward.

3 THE COURT: The dizziness isn't here. Ask if she  
4 remembers that.

5 MR. McGAVIN: I will get to that, Your Honor. I  
6 was first just trying to identify the date before I moved to  
7 the substance. So that's why I was just displaying the  
8 date. I'm ready to move on.

9 THE COURT: Then move to the substance. Now you've  
10 moved down to the substance. Okay.

11 MR. McGAVIN: Thank you, Your Honor.

12 BY MR. McGAVIN:

13 Q. Do you recall that you reported to Dr. Chinniry on or  
14 about March 28th, 2018, that the dizziness was persisting and  
15 you had problem with vertigo with fast movement?

16 A. In all honesty, no. I remember going to Dr. Chinniry  
17 whenever he told me to come back from my regular visit. I  
18 did not have recall. Dr. Chinniry and I talking about I'm  
19 having persistent vertigo, persistent vertigo, no, I don't.  
20 I was going to work every day. Vertigo is not something you  
21 can work with.

22 Q. How about -- I'm sorry, were you done? I apologize.

23 A. No problem. I was done.

24 Q. Thank you. How about slight dizziness with fast  
25 movement? Was that something you could go to work with?

1 A. Slight dizziness with fast movement was something you  
2 probably could, but I wouldn't do that.

3 Q. Dr. Haysbert, do you recall going back to see  
4 Dr. Chinniry on April 11, 2018, with continued difficulty  
5 with early a.m. vertigo?

6 A. No, I do not.

7 Q. I'm going to show you a document and ask you if this  
8 refreshes your recollection that on April 11, 2018, about six  
9 weeks before the subject incident, that you were having  
10 difficulties -- that you reported to Dr. Chinniry concerning  
11 vertigo?

12 A. This looks like the very same sheet. It's showing has  
13 the same thing on it, and I did not just go back to the  
14 doctor repeatedly saying the same thing to him. I really  
15 didn't do that.

16 THE COURT: There is a different date. Would you  
17 please go to the date.

18 THE WITNESS: And that's what I'm pointing out,  
19 that each of these reports that he shows me, it shows the  
20 same thing written on them, different dates, but the same  
21 things written on them, and I honestly don't recall going to  
22 Dr. Chinniry five or six times reporting vertigo, no, sir, I  
23 don't.

24 BY MR. MCGAVIN:

25 Q. Well, actually, isn't it correct, Dr. Haysbert, that the

1 record on April 11, 2018, is different because, "The patient  
2 has had difficulty with respect to continued early a.m.  
3 vertigo and has had difficulty with respect to the vertigo  
4 being positional and changing with movement"? Isn't that  
5 different language than we discussed earlier?

6 A. Maybe he had to put something there for his insurance. I  
7 don't know, sir. But the difference in the language, this is  
8 the first time I've seen a.m. written here. But other than  
9 that, everything that I see is like just picked up what was  
10 written the last time and changed the date and he put it on  
11 there. That's the way it seems to me, but I don't know.  
12 I've not read my medical records. This is good. I have not  
13 read them.

14 Q. Do you agree that on April 11th, for the first time,  
15 April 11, 2018, just six weeks before our incident, that you  
16 reported to Dr. Chinniry that you had been, "Hampered by the  
17 vertigo," which was not something previously reported?

18 A. No, I don't recall.

19 Q. Do you recall that on April 11, 2018, as a result of your  
20 complaints, that Dr. Chinniry ordered you to have or gave you  
21 an order to have an MRI scan of your brain?

22 A. He'd given me -- he'd asked me to go have one done a long  
23 time before. He actually wrote it so I could go do it.

24 Q. Well, let's just talk about what this chronology is. I'm  
25 showing you an order request summary from April 2018, which

1 includes a request for an MRI of the brain. Do you recall  
2 receiving that order on or about April 11 or shortly  
3 thereafter from Dr. Chinniry?

4 A. I recall Dr. Chinniry having told me at the onset, when I  
5 first went to him, that he was going to order a number of  
6 other diagnoses, if you would. One was an MRI. One was go  
7 to the ear, nose, throat specialist. He was trying to rule  
8 out the initial bout of vertigo that I had. And I do recall  
9 that this was later than the discussion that I been having,  
10 yes.

11 Q. Does this now refresh your recollection, Dr. Haysbert,  
12 that your bouts of vertigo and lightheadedness were ongoing  
13 more than just one incident but had been ongoing for about 16  
14 months or -- yeah, about 16 months before this incident?

15 MR. HAYSBERT: Objection, mischaracterizes her  
16 testimony.

17 THE COURT: Does it refresh your recollection or  
18 not?

19 THE WITNESS: I did not have bouts of vertigo for  
20 16 months.

21 BY MR. MCGAVIN:

22 Q. Is it correct, Dr. Haysbert, that you actually did have  
23 the MRI scan of the brain on or about June 4, 2018 as  
24 requested by Dr. Chinniry?

25 A. I remember having it at his request. The date, I don't



1 recall, because he told me about it much earlier than when it  
2 was actually scheduled because there were reasons why he  
3 didn't write it earlier, and I couldn't get in. And then  
4 when I did get in, there was -- the insurance company wanted  
5 me to have a different place, all those kind of things. I do  
6 recall some sessions of that.

7 Q. Just trying to get the chronology. Do you recall the MRI  
8 of your brain ordered by Dr. Chinniry before May 23, 2018,  
9 occurred on or about June 4, 2018, as reflected in the  
10 document that I'm displaying to you now?

11 A. I do recall it being ordered. I do recall taking it. I  
12 do not recall exactly what date it was. But he ordered it,  
13 and I did take it, yes.

14 Q. And does this document refresh your recollection?

15 A. This document refreshed the fact that I confirm I did  
16 have it, yes.

17 Q. Thank you. Now, isn't it true, Dr. Haysbert, that you  
18 never once complained to Dr. Chinniry after the incident of  
19 May 23, 2018, of a loss of consciousness?

20 A. No, that's not true. Dr. Chinniry and I talked many  
21 times about a number of things. I don't know that he put  
22 everything we discussed in his medical records. I can't  
23 attest to that. But, yes, he knows what happened because I  
24 explained it to him. He was even scheduled to come to the  
25 first time that the hearing was set.

1 Q. Did you or did you not tell him that you suffered a loss  
2 of consciousness?

3 A. I'm saying yes. I explained all of that to him. He was  
4 even scheduled to come the first time this case was set.

5 Q. All right. I'm going to show you a record from  
6 Dr. Chinniry, July 9, 2018. Does this refresh your  
7 recollection that this was the first time you went to see  
8 Dr. Chinniry after the incident?

9 A. I can't see what it says on the bottom. Scroll it up  
10 some.

11 Q. I will. I was just trying to confirm the date first.

12 A. I see the date that's written there is July, yes.

13 Q. Thank you.

14 A. Or happened then.

15 Q. Thank you. I have -- because of the size of the screen,  
16 I have to do part first and then move down. Thank you. On  
17 or about July 9, 2018, isn't it true you reported to  
18 Dr. Chinniry you had your fall?

19 A. I reported it to him before July.

20 Q. All right. And on July 9, 2018, did you report to him  
21 that you have vertigo?

22 A. No. I didn't go there for that at that time.

23 Q. All right.

24 MR. HAYSBERT: Objection, Your Honor. It actually  
25 says in the record vertigo was resolved. So where is this

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1 question coming from?

2 THE COURT: You can ask if that refreshes her  
3 recollection. She answered and said she didn't have  
4 vertigo. Isn't that what she said?

5 THE WITNESS: Yeah.

6 BY MR. MCGAVIN:

7 Q. All right. So if you look at the review of symptoms or  
8 systems, do you see that it, as you've pointed out correctly,  
9 it says, "No headaches, complain of vertigo, no injury." Do  
10 you see that, "CO vertigo"?

11 A. I see that. Now, what he was talking about to what we  
12 talked about, I don't know. Was he saying that I was  
13 reporting no headache dealing with vertigo, no injury, what?  
14 I don't know.

15 Q. Well, you see at the top, Dr. Haysbert, it says you were  
16 having -- "Still having some problems with lightheadedness  
17 and dull headache." Do you see that, the first paragraph?

18 A. Uh-huh. I see that's written.

19 Q. Is that what you were having, some lightheadedness and  
20 dull headache?

21 A. When was this?

22 Q. July 9, 2018.

23 A. Dull headaches? I was having bad headaches.

24 Q. I'm sorry?

25 A. I was having headaches in July.

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1 Q. Thank you. Isn't it true that those headaches resolved  
2 very shortly, very quickly?

3 MR. HAYSBERT: Objection, mischaracterizes her  
4 testimony.

5 THE WITNESS: No.

6 THE COURT: Overruled. She's answered. She said  
7 no.

8 THE WITNESS: I said no. Headaches -- you are  
9 confusing me in the sense of whether you are talking about  
10 headaches associated with what you said vertigo or headaches  
11 associated with the injury and the fall. Which are you  
12 talking about, because the headaches I have with the fall.

13 BY MR. MCGAVIN:

14 Q. Headaches are -- are they different?

15 A. Yeah, they can be. Yes. Headaches, you can have  
16 headaches here (indicating). When I first had the fall, I  
17 was having shooting headaches. I shared that.

18 Q. Is it correct, Dr. Haysbert, that you next saw  
19 Dr. Chinniry a few months later on or about September 10,  
20 2018, and at that time you were following up for dizziness?

21 A. I don't recall the date when I next saw Dr. Chinniry. I  
22 really do not.

23 Q. All right. I'm going to ask if this refreshes your  
24 recollection that on September 10, 2018, you went back to see  
25 Dr. Chinniry?

1 A. Okay. I go to see him whenever he schedules an  
2 appointment, yes.

3 Q. Do you see that at that point you had a follow-up on  
4 dizziness, dizziness had subsided, but you were having a  
5 feeling strange in your ear, and you had a suspicion of a UTI  
6 based on intermittent dizziness. Does that refresh your  
7 recollection?

8 A. I see what is written, sir. I can't tell you that I  
9 remember all the things each time that I went to the doctor  
10 and what he said they were from. I can only tell you that  
11 they were routine visits, and I did make them.

12 Q. Well, at that time did you report you had no headaches?  
13 Did you report that?

14 A. I just indicated I don't recall all of the things that I  
15 reported to the doctor at the time that I visited with him.  
16 I just don't recall all the dates I went, nor all the time,  
17 perhaps, if I had time to go all of this. I would be more  
18 alert to it, but at this time I can't say.

19 Q. Did you ever report to Dr. Chinniry that you were having  
20 any cognitive problems?

21 A. Dr. Chinniry and I talked about that, yes. He even  
22 shared some things that I could do in the conversation we  
23 had, yes.

24 Q. Do you remember that Dr. Chinniry asked you to undergo a  
25 test called a mini mental status exam?

1 A. No, I don't remember the name of a mini mental whatever,  
2 no, I do not recall that.

3 Q. And were you ever referred out for neuropsychological  
4 testing by Dr. Chinniry?

5 A. I went to a neurologist, Dr. Haider. I mispronounce the  
6 name sometimes.

7 Q. I'm talking about neuropsychological testing. You may  
8 not be familiar with it, and let me explain. It is where you  
9 go to a psychologist and have a battery of tests to test your  
10 memory, cognition. There are tests -- it takes about eight  
11 hours, and you have a test of math and reading and recall.  
12 Did you ever have such testing?

13 A. I don't recall him -- what's the word you used --  
14 ordering that for me, no, I do not recall that.

15 Q. In fact, you've never had that testing, have you?

16 A. I do not recall him ordering that.

17 MR. HAYSBERT: Objection. How is she supposed to  
18 know whether she had neuropsychological testing?

19 THE COURT: She said to her knowledge she hasn't.

20 THE WITNESS: I don't recall.

21 THE COURT: Is that what you said?

22 THE WITNESS: I do not recall him ordering that  
23 test.

24 THE COURT: She doesn't recall him ordering that  
25 test.

1 MR. MCGAVIN: Thank you.

2 BY MR. MCGAVIN:

3 Q. Now, in regard to your claims here in this case, isn't it  
4 true that you are not claiming any medical expenses?

5 A. That is correct.

6 THE COURT: What?

7 THE WITNESS: That is correct.

8 BY MR. MCGAVIN:

9 Q. And none in the past and none in the future?

10 A. That is correct.

11 Q. All right. What medications do you currently take?

12 MR. HAYSBERT: Objection, Your Honor. This is  
13 going outside the scope. She is not claiming any past or  
14 future medicals, so this is an inappropriate question.

15 THE COURT: He's asked her if she is claiming any,  
16 but he's now asking her what medication she takes.

17 MR. HAYSBERT: Why would -- that's a follow-up  
18 question to the first one. She's already indicated she's  
19 not claiming any medical, past or future, so why would he be  
20 asking questions about the medications she would be taking.

21 THE COURT: Because it goes to if you're taking  
22 medication for the condition that you claim that is  
23 resulting in the damages that you have claimed. He is  
24 saying you're not making any medical claims, you're not  
25 making any medical damages claim, but are you taking any

1 medication? That goes to other issues. If you want we can  
2 reserve this for, if you want her called back on the stand,  
3 because you didn't ask her about the medications she was  
4 taking, and it goes beyond direct, I will sustain that  
5 objection and make her subject to call during the defense's  
6 case if you want to do that.

7 MR. HAYSBERT: Your Honor, it is outside the scope  
8 of her direct examination so we object to it, but if he  
9 doesn't go into the cost of care, because that's future and  
10 past care she's not -- care cost that she is not requesting,  
11 then he can proceed, but we are putting objection on the  
12 record and reserving that.

13 THE COURT: You either object or you don't object.  
14 In other words, we have already determined that she's not  
15 claiming any medical damages from the standpoint of monetary  
16 medical bills or care. That's my understanding.

17 MR. HAYSBERT: That is correct, Your Honor.

18 THE COURT: He's asking her, though, what  
19 medications she's currently taking. That goes to, and I'm  
20 not going to explain any more in front of the jury. I rule  
21 it goes to the claims that you're making other than for  
22 medical bills.

23 MR. HAYSBERT: Thank you.

24 THE COURT: But it goes outside. If you want to  
25 torture this, that's fine. Check with Mr. McKelvey. It



1 seems like he needs to say something to you.

2 MR. HAYSBERT: Thank you.

3 MR. McKELVEY: No objection going outside the scope  
4 on this one issue, Your Honor.

5 THE COURT: So there are no objections to going  
6 outside the scope, and she can be asked that question?

7 MR. McKELVEY: On this limited issue, Your Honor,  
8 yes.

9 THE COURT: Go ahead.

10 MR. McGAVIN: Thank you.

11 BY MR. McGAVIN:

12 Q. What medications do you currently take, Dr. Haysbert?

13 A. I take a hypertension medication, it's a diuretic -- I  
14 don't remember the name -- and I take Tiroshint.

15 Q. Pardon me?

16 A. Tiroshint, T-i-r-o-s-i-n-t, I believe.

17 Q. Is that for too much or too little thyroid?

18 A. I don't know which one it is, but it's for one of those.  
19 It's for a thyroid condition, but I don't know which one. It  
20 is one or the other.

21 Q. Thank you. The medication for high blood pressure,  
22 you've been taking that for a number of years; isn't that  
23 right?

24 A. Oh, yes.

25 Q. Have you taken any medication, mood-altering medication

1 such as for depression or anxiety?

2 A. I've never taken a depression medicine, and I hesitate  
3 because sometimes medicines use for more than one thing. So,  
4 no, never taken any for anxiety.

5 Q. Have you had any evaluation by a psychiatrist or a  
6 psychologist of any kind?

7 A. No.

8 Q. And you haven't sought any such care in the past five  
9 years?

10 A. Not from a psychologist.

11 Q. Or psychiatrist?

12 A. Or psychiatrist.

13 Q. And you don't feel you need that, do you?

14 A. No. Not from the psychiatrist.

15 THE COURT: What about a psychologist?

16 THE WITNESS: No. Psychiatrist has more training  
17 than a psychologist so, no, I don't think I need that.

18 BY MR. MCGAVIN:

19 Q. Thank you. Now, you mentioned that you have a close  
20 family. How many children do you have?

21 A. I have five.

22 Q. And you mentioned that you like weekends to get together  
23 with your family; is that right?

24 A. Those that are around, yes.

25 Q. Logistically, when family is far away, you don't see each

1 other each weekend, so what I'm getting at your daughter, and  
2 her name is Nineveh? Did I pronounce that correctly?

3 A. Nineveh, yes.

4 Q. Is she an educator like you?

5 A. No, she's not.

6 Q. And Nineveh is still local?

7 A. She's -- she calls it bi-coastal because she -- her  
8 husband is in Florida, and she's here. But her job is here  
9 right now.

10 Q. Her job is where?

11 A. Here right now, Virginia.

12 Q. Thank you. And of your other children, how many are here  
13 local in the Hampton/Tidewater area?

14 MR. HAYSBERT: Your Honor, I'm just going to object  
15 to this line of questioning under number 9.

16 MR. MCGAVIN: I'm not going beyond this question,  
17 Your Honor. Goes to the weekends together.

18 THE COURT: You can ask that.

19 THE WITNESS: My youngest daughter just relocated  
20 back from California here.

21 BY MR. MCGAVIN:

22 Q. So just the two?

23 A. Yes.

24 Q. And was it the same distribution, so to speak, of your  
25 offspring back in 2018, or your daughter coming back is

1 something new?

2 A. Daughter coming back is something new. She had not been  
3 here then.

4 Q. And Nineveh got married or was married, excuse me, when?

5 A. Oh, gee. Dates run not close. Two years ago. Two years  
6 ago.

7 Q. Do you still visit with Nineveh on a regular basis?

8 A. Yes.

9 Q. And do you still visit with your younger daughter on a  
10 regular basis, or now that she's back, I guess you do?

11 A. Yes. Nineveh lives with me when she's here.

12 Q. She does. I see. All right. So you had mentioned  
13 before on direct that you felt some loss of your relationship  
14 with your family, and that's why I'm asking whether they are  
15 here local or far away?

16 A. Yes.

17 Q. And so they're about the same in terms of closeness; is  
18 that wrong?

19 A. That's wrong. One of them has been around. That's  
20 Nineveh. The others have not been as close. My oldest son  
21 is fairly close, I guess, because he lives in Washington.

22 Q. D.C.?

23 A. D.C. My youngest daughter was in California, so we  
24 didn't have the family group physically, but you know  
25 everybody does zoom now.

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1 Q. During COVID?

2 A. So we get together on zoom.

3 THE COURT: Get together on what?

4 THE WITNESS: Zoom.

5 BY MR. McGAVIN:

6 Q. You mentioned that you're not as active in boards as you  
7 were at one time?

8 A. That's correct.

9 Q. As of May 23, 2018, will you tell me specifically which  
10 boards you were serving on?

11 A. I'll try to remember all of them or as many of them as I  
12 can. SACS.

13 Q. Pardon me?

14 A. SACS, Southern Association of Colleges and Schools. That  
15 is an accreditation board for institutions of higher  
16 education in the southeast region.

17 Q. Is that a board that had a tenure for a board service, in  
18 other words, a two-year, three-year, five-year term?

19 A. I think it's -- I'm not certain, but I think it's a  
20 three-year term. You are up again and up again or you can  
21 asked to be -- serve on some other areas.

22 Q. When was it that you left the SAAC, S-A-A-C board?

23 A. I left SAACs after two consecutive terms, six years this  
24 past December, and could have served in another capacity but  
25 chose not to.

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1 Q. So that would be December 2022?

2 A. Correct.

3 Q. Thank you. And what other boards were you on --

4 THE COURT: Excuse me. Mr. Bingham, what are you  
5 doing on the computer?

6 MR. BINGHAM: Organizing exhibits for his  
7 presentation.

8 THE COURT: All right. Because I can see that  
9 you're doing something on the computer, and we don't have  
10 anything up on the screen.

11 MR. BINGHAM: No, getting ready for anything he may  
12 call. I'm sorry.

13 THE COURT: You're just doing exhibits. There is  
14 no note taking allowed on the computer. We have already  
15 made that clear.

16 MR. BINGHAM: I'm not doing that.

17 THE COURT: Just want to be sure.

18 MR. BINGHAM: Yes, ma'am.

19 THE COURT: I do see you working on the computer.  
20 Go ahead.

21 MR. MCGAVIN: Thank you, Your Honor.

22 BY MR. MCGAVIN:

23 Q. Dr. Haysbert, what other boards were you on as of May 23,  
24 2018?

25 A. NIA.

1 Q. What does that stand for?

2 A. National Institute of Aerospace.

3 Q. Do you need a glass of water perhaps?

4 A. No, that's okay. Thank you.

5 Q. You're welcome. And how long had you been on that board  
6 as of 2018?

7 A. As of 2018?

8 Q. Yes, ma'am. May 23, 2018.

9 A. Let's see. I think I got on that board when I came back,  
10 2014.

11 Q. When did you go off?

12 A. I'm still on that one, but what I've done is assign  
13 someone else on the board with me so -- that representative  
14 from my school so that that person can attend, and I'm not  
15 attending, so the institution would still have  
16 representation.

17 Q. But you're still on that board?

18 A. I'm still listed, yes.

19 Q. What other boards were you on on May 23, 2018?

20 A. I don't remember all of them. 2018. That's a long ways  
21 back. I think I was still on the advisory board for the City  
22 of Hampton City Schools.

23 Q. When did you -- are you still on that board?

24 A. I am listed there right now. I'm not going to continue.

25 Q. I'm sorry. I just didn't hear you.

1 A. I am listed there right now, and that's one of the ones  
2 I'm not going to continue. I'm going to discontinue that  
3 one.

4 Q. As of today, which is August 10th, 2018, is it correct  
5 that you're still on the advisory board for the City of  
6 Hampton Public Schools?

7 A. You said 2018.

8 Q. I misspoke. As of today, August 10, 2023.

9 A. I'm still listed as a member of that board. I have not  
10 written my letter of resignation yet, yes, you're correct.

11 THE COURT: Were you on the board in 2018?

12 THE WITNESS: I think so. I'm not sure.

13 THE COURT: So you either were on the board or you  
14 went on it sometime after May 23rd, 2018?

15 THE WITNESS: That's been such a long time ago. I  
16 was probably on it in 2018. I cannot be certain. I don't  
17 want to record something that's inaccurate.

18 BY MR. MCGAVIN:

19 Q. What other boards were you on as of May 23, 2018?

20 A. Those are the primary ones that I recall.

21 THE COURT: You said you had gotten off of certain  
22 boards?

23 THE WITNESS: SAACs is one of the ones I had gotten  
24 off. That's the primary one that I have gotten off. NIA,  
25 that's the one that I assigned somebody else to so that the



1 university still be represented, but it wouldn't be with me.  
2 And the advisory board, the local one that I'm going to  
3 remove myself from.

4 THE COURT: Again, your voice trailed off.

5 THE WITNESS: And the advisory board for the City  
6 of Hampton, I'm going to -- there is no term limitation, but  
7 I will remove myself from that one. Those are the decisions  
8 I made when I made the decision to retire.

9 BY MR. MCGAVIN:

10 Q. Have you written a letter to the Hampton University Board  
11 of Visitors or to the president indicating that when this  
12 current contract expires, you intend to retire?

13 A. I have not, but my president and I have talked about it.

14 Q. Is it correct that your contracts with Hampton University  
15 are two-year contracts?

16 A. That's incorrect.

17 Q. Have they been two-year contracts in the past?

18 A. No, they haven't. There was one written once that was a  
19 mistake for two years, and it was rewritten for one year.

20 And that mistake happened, I think, with all the  
21 administrative industry, if I remember correctly.

22 Q. I'm sorry, just --

23 A. My contracts as -- I'm sorry, contracts are annual  
24 contracts. There was one year a mistake was made, two years,  
25 it was corrected to reflect a one-year contract. All

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1 contracts are annual, and increments are annually. This  
2 president gave everybody an increment this past year. Had  
3 nothing to do with anything other than if you worked there  
4 last year, you got same incremental across the board raise.  
5 Everybody did.

6 Q. Okay.

7 THE COURT: I'm a little bit confused because of  
8 earlier mentions. Your current contract is for how long?

9 THE WITNESS: One year.

10 THE COURT: When was it renewed?

11 THE WITNESS: July 1, 2023.

12 THE COURT: It goes through July 1, 2024?

13 THE WITNESS: June 30th, 2024.

14 THE COURT: All right.

15 BY MR. MCGAVIN:

16 Q. Is it correct that you have to sign your contract and  
17 represent to the university that your employment is subject  
18 to excellence in personal conduct and in performance of your  
19 duties?

20 A. Yes.

21 Q. And I'm showing you what we have as the contract for June  
22 23, 2021. Do you see that?

23 A. I do.

24 Q. And do you see that on this contract it ended June 30,  
25 2023?

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1 A. And that's the one I told you that was written by the  
2 outgoing president that was re-issued because it was issued  
3 as a two-year, and it was re-issued as a one year.

4 Q. All right. And is this your signature there on June 30,  
5 2021?

6 A. That is correct.

7 Q. And you would not have signed this on June 30, 2021, if  
8 you did not believe that you could provide excellent service  
9 to Hampton University; isn't that true?

10 A. That is correct.

11 Q. And, in fact, you have?

12 A. By my judgment, yes.

13 Q. Now, in terms of your colleagues at work, are any of  
14 those colleagues, either the General or Dr. Harvey or any of  
15 your colleagues, are they going to be here to testify about  
16 any limitations or changes that you claim?

17 A. Not to my knowledge.

18 Q. Is it correct, Dr. Haysbert, that you have not lost a day  
19 of work since May 23, 2018, that you attribute to this  
20 incident?

21 A. I can't say that, sir, because if I were not at work for  
22 a day, I wouldn't have to report why I wasn't there, if  
23 that's what you mean.

24 Q. Well, how many days have you missed from work that you  
25 attribute to this incident?

1 A. I couldn't tell you.

2 Q. In fact, isn't it correct that you make no claim for any  
3 lost income in the past or in the future?

4 A. That is correct. I make no claim, but that doesn't mean  
5 I wasn't at work because of what may have happened at a  
6 particular time.

7 THE COURT: But you didn't lose any income because  
8 of it?

9 THE WITNESS: I did not lose any income, no,  
10 because I had -- I have built up leave time. Having been  
11 there as long as I worked, I have leave. All I would need  
12 to do is take leave.

13 MR. HAYSBERT: I'm going to object and have  
14 continuing objection to this line of questioning.

15 THE COURT: Well, what is your objection, because  
16 she said that that didn't mean that her -- if we go back and  
17 look at her answer, she had days, and that didn't mean that  
18 she hadn't been there, but the point is, you're not claiming  
19 lost wages; is that correct?

20 MR. HAYSBERT: We are not claiming lost wages.

21 THE COURT: You are not claiming them because she  
22 didn't lose any; is that correct?

23 MR. HAYSBERT: Again, we are preserving the  
24 objection.

25 THE COURT: I've ruled that has been represented to

1 the Court, and it's not part of the case that's being  
2 presented. It's been totally represented to the Court on a  
3 number of occasions. There is no claim at this juncture for  
4 lost wages, and the reason being is you have not lost any  
5 wages, have you?

6 THE WITNESS: I've not lost any wages. I have  
7 built in leave time for the number of years I've been there,  
8 so if ever I'm not at work, I just take leave. No one asks  
9 why you take leave. That's what you've earned.

10 MR. HAYSBERT: Same objection to the question.

11 THE COURT: Go ahead.

12 MR. MCGAVIN: Thank you, Your Honor.

13 BY MR. MCGAVIN:

14 Q. You mentioned that you're very involved in your church.  
15 Which church is that?

16 A. The Holy Temple Church of the Lord Jesus Christ of the  
17 Apostolic Faith.

18 Q. Slower.

19 A. The Holy Temple Church of the Lord Jesus Christ of the  
20 Apostolic Faith, Incorporated.

21 Q. Thank you. Where is the -- do you call the temple the  
22 building?

23 A. It is called church.

24 Q. Where is it?

25 A. There's one in Gloucester, Virginia. The headquarters is

1 in New York. The one that I attend mostly is in Gloucester,  
2 Virginia.

3 Q. How far is that from your house?

4 A. I think it's 30 minutes, maybe 30 minutes' drive, I'm  
5 thinking.

6 Q. During the time of COVID, did you still attend church  
7 regularly?

8 A. We had church.

9 Q. In person?

10 A. Uh-huh.

11 Q. Is that a yes?

12 A. I'm sorry, yes, our church had service in person. There  
13 was a period of time, I think, they closed the doors for two  
14 or three weeks, yes, but other than that...

15 Q. Did you reduce the frequency that you attended church  
16 during COVID?

17 A. I went to church when church was available when I could.  
18 I reduced the frequency, not because of doors were closed. I  
19 reduced the frequency because of my election to do so. I did  
20 not want to be around people that could tell easily that I  
21 was not my social self.

22 Q. I'm asking you about COVID. Did you reduce the frequency  
23 of attending church due to fears of getting COVID?

24 A. No, I didn't. I've had COVID twice, but I didn't reduce  
25 going to church because I thought -- I did not reduce going

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1 to church because I thought I was going to get COVID, no, I  
2 didn't.

3 Q. Your pastor or your preacher at church, who is that?

4 A. He's Elder Robert Williams.

5 Q. And Pastor Williams, do you know him well?

6 A. Oh, yes. I've been going to that location for quite some  
7 time.

8 Q. Many, many years?

9 A. Uh-huh.

10 Q. Is that a yes?

11 A. Yes. I'm sorry.

12 Q. That's okay. I'm just trying to make the court  
13 reporter --

14 A. I'm sorry. Yes.

15 Q. Thank you very much. Is Pastor Williams going to be here  
16 to testify?

17 A. Not to my knowledge.

18 Q. Are any of your friends or colleagues or parishioners or  
19 congregants coming to this trial to testify about you?

20 A. No.

21 Q. Where did you live and -- in the house where you've lived  
22 many years, do you have neighbors who are friends?

23 A. Yes.

24 Q. And are they coming to testify about any changes in you?

25 A. No.

1 Q. Do you have an administrative assistant?

2 A. Yes.

3 Q. What is his or her name?

4 A. She is new. In fact, she hasn't been with the university  
5 a year yet.

6 Q. Prior to that, did you have a longstanding administrative  
7 assistant?

8 A. That individual, wouldn't say longstanding. That  
9 individual is no longer with the university.

10 Q. How long was that person there?

11 A. In my office or at the university?

12 Q. With you, working with you?

13 A. Less than three years.

14 Q. And is that person going to be coming to testify  
15 regarding your schedule?

16 A. No.

17 Q. Have you produced a written schedule that shows the  
18 number of meetings that you had 2018, 2017, versus 2023 or  
19 2022?

20 A. I have not produced a written schedule of my meetings.

21 Q. So you have no record that you can show us that shows how  
22 many meetings you would have per week before May 23, 2018,  
23 compared to after May 23, 2018?

24 A. I have records. I've not produced any to you, but I have  
25 records. But I have no reason to lie.



1 Q. In regard to your performance at the university, did you  
2 have performance evaluations?

3 A. No. Don't have any performance evaluations that were  
4 written by my supervisor.

5 Q. All right. I would like for you to review two exhibits  
6 that we have which are videos where you spoke on behalf of  
7 the university after the incident. They have been premarked  
8 and identified as exhibits, and I'd ask you to confirm -- I'd  
9 like to display these to the jury, Your Honor. I'd like to  
10 play them. They are short videos.

11 MR. HAYSBERT: Your Honor, I would have no  
12 objection if we are also allowed to play a short video  
13 responding everybody to those videos. If we are not allowed  
14 to do so, then we would object.

15 THE COURT: On redirect if it's responsive, you  
16 would be able to do that. I don't know. We would have to  
17 look at the video, but I know the video's here, and if it's  
18 responsive, yes, you can show any responsive video to what  
19 he's showing on redirect.

20 MR. HAYSBERT: Thank you, Your Honor.

21 THE COURT: Then I think before we go into the  
22 videos, this is a good time for a luncheon recess. So it's  
23 about five minutes after 1:00. We will be on a luncheon  
24 recess until 2:00.

25 I would tell you, Dr. Haysbert, that you are in the

1 middle of your testimony, and as such you may not discuss it  
2 with anyone. That includes your counsel, that includes  
3 anyone whatsoever, because that is a rule of court. Once a  
4 witness testifies, and they're in their testimony, that  
5 witness cannot discuss the testimony with anyone until the  
6 case is over, and that would mean your daughter, too.

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: I will tell that to each witness that  
9 comes in. The Court is in recess until 2:00.

10 (Luncheon recess from 1:05 p.m. to 2:02 p.m.)

11 THE COURT: Ladies and gentlemen, they are all  
12 back, and I hope you had a nice luncheon recess, whatever it  
13 was. I can assure you it beats the snack bar upstairs. So  
14 I hope that you had a nice lunch and have now gotten rested,  
15 and we will continue with the cross-examination of  
16 Dr. Haysbert.

17 MR. McGAVIN: Your Honor, I do want to pass up a  
18 filing that we've made related to the *Vilseck* matter, which  
19 I have a copy for counsel.

20 THE COURT: The what matter?

21 MR. McGAVIN: The *Vilseck*, the matter I passed up  
22 to you earlier this morning.

23 THE COURT: Okay.

24 MR. McGAVIN: Further amplifying. I want to  
25 provide a copy to the Court and to the law clerk. Thank

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1 you.

2 THE COURT: You've given it to Mr. Haysbert and the  
3 Court.

4 MR. MCGAVIN: Yes, Your Honor.

5 Your Honor, at this time I would like to display to  
6 the jury Defendant's Exhibit Number 9, which is a Hampton  
7 University fund-raising video from 2020. It's on our  
8 exhibit list, and I would like to first qualify the  
9 foundation for it with a question or two with Dr. Haysbert,  
10 if I may proceed that way.

11 THE COURT: All right.

12 MR. MCGAVIN: I believe there were objections to  
13 it.

14 THE COURT: Well, you're offering it for what the  
15 Court said it could be offered for, as I recall.

16 MR. MCGAVIN: Yes.

17 THE COURT: Mr. Haysbert has agreed. He said he  
18 wants to reserve an option in redirect to show something in  
19 response.

20 MR. MCGAVIN: I understand that, Your Honor.

21 THE COURT: You can go ahead. I know what it is,  
22 and I know why it's being offered.

23 MR. MCGAVIN: Thank you, Your Honor. May I  
24 introduce it as to what it is?

25 THE COURT: Yes. Is there any objection? It's a

1 video for Hampton University featuring the plaintiff.

2 That's the way it's been labeled on the exhibit list.

3 MR. McGAVIN: Yes. June 29, 2020, Your Honor.

4 THE COURT: All right.

5 MR. McGAVIN: Thank you.

6 (Video playing at this time.)

7 BY MR. McGAVIN:

8 Q. Dr. Haysbert, would you agree that was you presenting  
9 that fund-raising video?

10 A. That was me reading from -- what do you call it?

11 Q. Teleprompter?

12 A. Teleprompter, reading from the Teleprompter.

13 Q. And how often were you called upon to present  
14 fund-raising appeals on behalf of the university?

15 A. That was one that I did in probably the last four or five  
16 years.

17 Q. And before 2018, did you do any?

18 A. Not like this.

19 Q. That's the only one you've done by video?

20 A. That I can recall on video. The only -- yeah. Okay.  
21 That I can recall, yes.

22 Q. Is it correct, Dr. Haysbert, that you regularly stand at  
23 graduation ceremonies and introduce the graduating class or  
24 serve next to the president in that role?

25 A. I do, and I am reading from a script.

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1 Q. Did you read from a script before 2018, May 23, 2018?

2 A. Some occasions and some not. One time I would do it  
3 without it, and then after 2018, with the script.

4 Q. Do you have any video that shows you presenting in 2017,  
5 perhaps, without a script?

6 A. I didn't keep any of those videos, but the university  
7 does.

8 Q. Yes. And then you spoke at -- you spoke at the occasion  
9 of Dr. Harvey's retirement in 2022, did you not?

10 A. I did so, again, reading from the script.

11 Q. And who wrote that script?

12 A. People in my office.

13 MR. MCGAVIN: I have no further questions for you.  
14 Thank you, Doctor.

15 THE COURT: Is that all you want to present?

16 MR. MCGAVIN: Yes, it is, Your Honor.

17 THE COURT: All right. Redirect?

18 MR. HAYSBERT: Yes, Your Honor. I would like to  
19 publish a rebuttal video to the videos that were just  
20 published by defense counsel.

21 THE COURT: Where is it in the exhibit list?

22 MR. HAYSBERT: It would not be in the exhibit list,  
23 Your Honor. This is rebuttal to the impeachment. The  
24 videos, there were several videos of impeachment evidence  
25 were not provided on the exhibit list. So this is to rebut

1 the information that's been presented to the jury.

2 THE COURT: Ladies and gentlemen of the jury, you  
3 will need to step out for a minute, please.

4 (Jury out at 2:12 p.m.)

5 THE COURT: This exhibit that was just presented is  
6 admitted. I assume you were moving to admit it?

7 MR. MCGAVIN: Yes.

8 THE COURT: Then it would be D9, I believe.

9 MR. MCGAVIN: Yes, Your Honor.

10 (Defendant's Exhibit 9 received in evidence.)

11 THE COURT: It was specifically said on here  
12 offered for impeachment. So you knew that this video had  
13 the potential to be offered for impeachment. Where is it in  
14 the rules, and particularly in the way we do our final  
15 pretrial conferences, that you need to list all exhibits and  
16 produce all exhibits that you may use.

17 In other words, you don't have to use an exhibit,  
18 you don't have to call a witness, but you do have to let the  
19 Court know and the parties know what it is that you plan to  
20 present. Have you produced this?

21 MR. HAYSBERT: I have produced it, Your Honor.

22 THE COURT: And you never listed it?

23 MR. HAYSBERT: Your Honor, it wasn't something that  
24 we needed to list, in my estimation, because it was to serve  
25 as impeachment evidence on Dr. Haysbert's behalf against

1 whatever impeachment evidence was being offered by the other  
2 side. Again, this is impeachment evidence. It just  
3 happened to be put on the exhibit list, and only some of it  
4 is. We received four videos from opposing counsel, two of  
5 which are not on the exhibit list.

6 THE COURT: Because they didn't choose to use them.  
7 Why didn't you put them on yours, then?

8 MR. HAYSBERT: Your Honor, from what I was told --

9 THE COURT: You've got local counsel, and I don't  
10 know who told you, but local counsel is responsible, and you  
11 know local counsel, if he doesn't, he should know the rules  
12 of this court. We don't have trial by ambush. Everything's  
13 on the record in advance.

14 MR. HAYSBERT: This isn't trial by ambush. They  
15 have received a copy of it.

16 THE COURT: They've received a copy, but it's not  
17 listed as being at trial.

18 MR. HAYSBERT: In addition to that, defense counsel  
19 had no argument against our use of it because I conditioned  
20 the use of his impeachment video on our ability to rebut it  
21 with another video.

22 THE COURT: That doesn't get it in. You didn't say  
23 conditioned on that. You didn't say before it. I assumed  
24 it was on your exhibit list. So you're doing the things  
25 that you were doing before. Don't diverge the question with

1 a red herring. Yes, I said you could show another video to  
2 rebut that, but I didn't know you didn't have it on your  
3 exhibit list.

4 I haven't reviewed every one of these exhibits,  
5 only the ones that there were objections to and that the  
6 Court had to rule on them. It's not in either one of these  
7 books. It's not available. Let me just see. There may not  
8 be an objection to it. If it's not, then I'll waive the  
9 rules and let it in. Is there any objection to it?

10 MR. MCGAVIN: Yes, Your Honor. I'm not sure which  
11 video it is. If it's the day-in-the-life video of  
12 Dr. Haysbert, that was ruled on previously. It was offered,  
13 but I don't know if that's what it is.

14 THE COURT: Let's go to the final pretrial and  
15 look. I'm just looking at the final list now. So let's go  
16 to the pretrial, and if it's been ruled on, and now you're  
17 trying to get in an exhibit.

18 MR. HAYSBERT: It has not been ruled on, Your  
19 Honor. This is not the day-in-the-life video that we have.  
20 That's a six-minute video. This is a five-second video  
21 that's explicit to rehabilitate the plaintiff.

22 THE COURT: What is it?

23 MR. HAYSBERT: It's a video of her where she is  
24 speaking off the cuff without a script or anything, and she  
25 is in front of a crowd, and she's essentially showing the



1 deficits that she's discussed today.

2 THE COURT: She's showing what?

3 MR. HAYSBERT: She's showing the deficits that  
4 she's discussed with the Court today. It's indicative of  
5 what she's suffered.

6 THE COURT: So let's look at the final pretrial  
7 order. That's the first one that was entered by Judge  
8 Krask. We spent a whole day last week going through these  
9 orders and consolidating them into one.

10 So let's look at when we go to the exhibits.

11 MR. MCGAVIN: Your Honor, the one I was referring  
12 to is Exhibit 33, which was the day-in-the-life video. I  
13 had not received a different video, to my knowledge.

14 THE COURT: Let's see. This is a day in the life.  
15 Is it on the original as 33?

16 MR. MCGAVIN: Yes, Your Honor. The objection to  
17 that was sustained. There is an S.

18 THE COURT: That is correct. Excerpts from the  
19 day-in-the-life video, and that was sustained, and that is a  
20 ruling of the Court. It was sustained back on the first  
21 final pretrial conference you had.

22 All right. So where is it on here?

23 MR. HAYSBERT: Your Honor, the video is being  
24 introduced as rehabilitation for Dr. Haysbert. That was the  
25 express purpose of the video, and that is what we explained

1 earlier. We were going to allow impeachment evidence in.

2 THE COURT: You didn't have any choice to allow  
3 impeachment evidence in. The ruling had been made either  
4 then or I said they can recall her. In other words, they  
5 are entitled to cross-examine. They're entitled to impeach  
6 the witness. Your objection was that their examination was  
7 going beyond the scope of the direct, and I said if that's  
8 your objection, and you persist in that objection, that's  
9 fine. I will then have them call her in their case, and  
10 they can then offer any impeachment through her in defense.  
11 Mr. McKelvey, with whom you agreed, said we are not going to  
12 just do this as an exercise whereby she has to be recalled.

13 So my ruling is that this was impeachment evidence.  
14 It was proper cross-examination of her, and the only thing  
15 was some of the cross-examination went past the scope. You  
16 didn't want to go into those areas, apparently, but that's  
17 okay. But they are then entitled to impeach when she's  
18 making statements that she's had persistent problems, and so  
19 forth. So you have not listed this exhibit, and you  
20 apparently have not produced it to the other side even.

21 MR. HAYSBERT: I have produced it to the other  
22 side, Your Honor. It was in the document and in the flash  
23 drive that we provided to opposing counsel in overnight  
24 mail.

25 THE COURT: Wait. The flash drive was an

1 animation. Are we talking about the most recent overnight?

2 MR. HAYSBERT: It wasn't just an animation. It  
3 also included the five-second video as well, and we produced  
4 that to them. So we provided everything that we intend to  
5 show to the jury to Mr. McGavin already. He's had it for a  
6 very long time.

7 THE COURT: He couldn't have had it for a very long  
8 time because he didn't have the exhibits and the Federal  
9 Express package the day that trial was supposed to start.  
10 So he couldn't have had it for a very long time because what  
11 we went through earlier in the week is that the Federal  
12 Express package arrived the day of trial in his Fairfax  
13 office. Then his Fairfax office had to re-send it down  
14 here. In that package were your exhibits and the animation  
15 thumb drive. That is what is on the record of this case.

16 Now you're saying they've had it for a long time.  
17 A long time would not be -- today is Thursday. A long time  
18 wouldn't be Tuesday when we had already started the case and  
19 had to spend all day straightening out things that should  
20 have been straightened out. So you want to show a video  
21 that was not produced in discovery.

22 MR. HAYSBERT: It was produced during the discovery  
23 period, Your Honor. They had the video for a very long  
24 time. In the exhibits that we provided on Saturday was just  
25 an update based on the Court's final status conference order

1 that came out on August 7th. They already had our exhibits  
2 originally. They had our exhibits twice.

3 THE COURT: I don't know even what you are talking  
4 about. So I tell you what. Let's look at this video, and I  
5 will ask them if it was produced and if it was produced  
6 during discovery because you don't have it listed anywhere.  
7 That still doesn't mean it can come in. There are specific  
8 rules of this court in terms of doing final pretrial orders.

9 You are to list all exhibits that you may use. You  
10 can list them in two ways. You can list them definite use,  
11 may use. You can say the reason, and they did when there  
12 was an objection here. The ruling on the one that you had,  
13 and it was ruled on, we have gone through that. Which one  
14 was it, 30?

15 MR. MCGAVIN: 33, Your Honor.

16 THE COURT: 33 and it was ruled on. Everybody has  
17 known for a long time about that. But what I'm saying is  
18 nowhere on these exhibit lists has the Court been advised,  
19 and the party is now saying they didn't get it, they didn't  
20 know about it, and nobody seems to know what you're talking  
21 about. So why don't you put it on and let's see it.

22 Dr. Haysbert, if you would please step out. Well,  
23 you can just step down from the stand, if you'd like. You  
24 don't have to step out.

25 MR. MCGAVIN: Your Honor, may I suggest, if it's

1 what was sent to us, we have the previously produced -- what  
2 I recognize the previous day-in-the-life video. That's what  
3 we received on Tuesday, which the Court ruled on. So I  
4 think the Court should see what it was that was provided.

5 THE COURT: Well, first of all, you look at this,  
6 and if you haven't been provided it, you haven't been  
7 provided it. Then if you want to completely confirm that,  
8 this is going to be serious, Mr. Haysbert. If you represent  
9 to me as an officer of the Court that you provided it, and  
10 it's not in that package, because we have that. It wasn't  
11 on the thumb drive you sent the Court that I'm aware of.

12 MR. HAYSBERT: No, Your Honor. The impeachment  
13 evidence that we received from opposing counsel was not  
14 provided to the Court as well.

15 THE COURT: Wait. We are talking about the video.  
16 Again, stop putting in red herrings. Stop chasing off the  
17 issue. You claim you have a video. Let's see it. Let's  
18 see if you produced it. If you haven't produced it, you're  
19 not going to be able to use it at all. If you have produced  
20 it, I'll think about it because you haven't listed it  
21 properly under the rules. I've told you repeatedly, I'm a  
22 referee. I call balls and strikes. I call under the rules.  
23 The rules consist of the Federal Rules of Civil Procedure,  
24 the Federal Rules of Evidence, and the local rules of this  
25 Court, and the orders of this Court, when you're ordered in

1 a final pretrial conference and how to do the final pretrial  
2 orders. So let's see what it is you are claiming you have  
3 produced. Go ahead and show it. Everyone look carefully.

4 Why are you consulting with another attorney that  
5 is not in this case? I recognize Mr. Thomas. He's sitting  
6 out there. Nice to see you, Mr. Thomas.

7 MR. HAYSBERT: I had a question on the evidence  
8 rules to Mr. Thomas, Your Honor.

9 THE COURT: You have to know the evidence rules.

10 MR. HAYSBERT: I know the evidence rules, but I had  
11 a question.

12 THE COURT: If you know them, go forward.  
13 Mr. Thomas is not admitted in this case in any way. Go  
14 ahead.

15 MR. HAYSBERT: Thank you.

16 THE COURT: You've got Mr. McKelvey, if you need to  
17 contact the rules. You've got Mr. McKelvey as local  
18 counsel.

19 MR. BINGHAM: It's not recognizing the system.  
20 It's been working all morning, and now it's not recognizing  
21 it.

22 THE COURT: Turn the volume down just a little bit.  
23 I don't know. Maybe you can.

24 MR. BINGHAM: Yes, ma'am.

25 THE COURT: Was that it?

1 MR. BINGHAM: That was it.

2 MR. HAYSBERT: That was the whole video.

3 THE COURT: There is no foundation for when it was,  
4 for what purpose, and then the word in the end is "setback."  
5 Whose setback? She is introducing Miss Hampton University,  
6 if that's what I heard. It was very loud.

7 MR. HAYSBERT: Your Honor, we can lay a proper  
8 foundation through the witness herself.

9 THE COURT: What's the date? Now she is going to  
10 remember the date. There is no date on there. There is  
11 something about introducing Miss Hampton University, or at  
12 least that's what I have, and then and I don't know if she  
13 is meaning despite Miss Hampton University setbacks. There  
14 is an implication there that she's talking about her own  
15 setbacks or somebody is. Who said that? Where is the rest  
16 of the video? It's completely out of context. Where is the  
17 whole video?

18 MR. HAYSBERT: It's not completely out of context.

19 THE COURT: It is completely out of context. Where  
20 is the whole video?

21 MR. HAYSBERT: So the issue here is that the other  
22 side is attacking her credibility with this impeachment  
23 evidence showing that she's not -- nothing is wrong with  
24 her, and we have evidence to suggest the opposite.

25 THE COURT: I didn't see anything wrong with her in

1 that video, but I don't understand. You don't have a date.  
2 You don't have an occasion. She's introducing Miss Hampton  
3 University. Does Miss Hampton University come up there? In  
4 the end there is just this word setback." It is completely  
5 out of context. The other video was an entire video, the  
6 date was on it, the purpose was on it. We don't know when  
7 this was. All I can tell you is where is the whole video?

8 MR. HAYSBERT: Your Honor, we can obtain the whole  
9 video. Here is the other thing --

10 THE COURT: I don't even know. You keep  
11 interjecting, and the point being that I don't even know if  
12 you've even produced this snippet. So this is what I'm  
13 going to ask. Has defense counsel seen this snippet of a  
14 video?

15 MR. MCGAVIN: Your Honor, not to my knowledge. I  
16 must say we received many, many things over the last week,  
17 but not to my knowledge.

18 THE COURT: Was it ever listed in any type of  
19 exhibits that were going to be introduced as evidence?

20 MR. MCGAVIN: Not to my knowledge. I believe this  
21 is the first I've seen of it. To be clear, this five or six  
22 seconds is not on what I received on -- that was FedExed  
23 back from my office on the morning -- I guess I got it on --  
24 I guess I received it on the second day of trial. I'm  
25 confused on the timeline. Nonetheless, in the box that I



1 got from counsel, there is an orange thumb drive. It has  
2 the-day-in-the-life video that the Court already ruled on as  
3 well as the exhibits -- or the animation.

4 THE COURT: So he's saying that it has the day in  
5 the life and the animation. You are saying that this is on  
6 the thumb drive, yes or no?

7 MR. HAYSBERT: Yes, Your Honor. There were four  
8 videos.

9 THE COURT: Let's see your thumb drive. Let's see  
10 what's on it.

11 MR. MCGAVIN: You want me to play it, Your Honor?

12 THE COURT: Yes. I'm going to let you go ahead and  
13 play it. I'm going to ask you one more time. We have gone  
14 through the whole scenario of Federal Express. I'm not  
15 going to go back through it.

16 MS. BLAKE: I apologize, just for the record, I  
17 started utilizing the USB to start saving our documents on  
18 it, and we were transitioning.

19 THE COURT: Well, we have the same thumb drive. Is  
20 it the same thumb drive you sent the Court?

21 MR. HAYSBERT: Your Honor, this was impeachment  
22 rehabilitation evidence we were sending to Mr. McGavin. So,  
23 no, the Court would not have received this. Again, we have  
24 been exchanging video throughout this whole process. The  
25 Court has not received it.

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1           THE COURT: Then I'm going to ask Mr. Bingham,  
2 where did you get it from? Was it on a thumb drive with the  
3 animation?

4           MR. BINGHAM: I didn't receive the thumb drive. We  
5 exchange files through a share file application, so I get it  
6 from a link, and I download them myself. I'm sorry. I  
7 download them myself.

8           THE COURT: All right. That's fine. I know you  
9 are here just to work it.

10          Now, Mr. Haysbert, you are an officer of the Court,  
11 and I consider this very important, and I'm going to ask you  
12 some direct questions.

13          MR. HAYSBERT: Yes, Your Honor.

14          THE COURT: There could be some direct consequences  
15 here because enough becomes enough at some point. Now, are  
16 you talking about the Federal Express package that we were  
17 dealing with earlier this week where it arrives in defense  
18 counsel's office on the morning of trial by FedEx, and then  
19 it had to be FedExed from his office down here, and then he  
20 represented that he did get it down here -- I'm not going  
21 back through the whole timeline -- and that there was a  
22 thumb drive in there, and the thumb drive contained the  
23 brain animation we were talking about for Dr. Filler, and  
24 that they oppose that, or Dr. Haider and Filler at the time,  
25 and they oppose that. They are saying that the only video

1 on it, I guess this is the day in the life?

2 MR. MCGAVIN: That's what I believe it is, Your  
3 Honor.

4 THE COURT: This is a day in the life that has been  
5 already ruled upon. You are saying to the Court that on  
6 that thumb drive, there was also this snippet, but without  
7 any context?

8 MR. HAYSBERT: Your Honor, I put -- there are three  
9 videos that were put in that thumb drive and one image. On  
10 video was the-day-in-the-life video, one image, and there  
11 were two excerpts. One was before the accident excerpt. It  
12 was like a five-second excerpt, and there was an  
13 after-the-incident excerpt that was like a five-second  
14 excerpt.

15 The one I'm specifically talking about with the  
16 Court that I want to publish to the jury, to contradict what  
17 the other side has put on regarding her credibility and her  
18 veracity for the truth, is a five-second excerpt of her  
19 after the incident. That excerpt is on this thumb drive.  
20 If it wasn't, even assuming that it wasn't excerpted from  
21 the-day-in-the-life video, it is actually in  
22 the-day-of-the-life video as a five-second excerpt. So it's  
23 got to be there, and he's already told me the  
24 day-in-the-life video is there. I know there were three  
25 videos put in there.

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1           THE COURT: She's dressed totally differently than  
2 she was in the day-in-the-life video. She's dressed in a  
3 white suit with a black collar and she's dressed differently  
4 than she was in the other video. So I don't see how it  
5 could have been part. She is dressed in a blue outfit, and  
6 she's dressed differently.

7           MR. HAYSBERT: Same exact outfit.

8           THE COURT: It is not the same exact outfit. Go  
9 back to the day in the life.

10          MR. HAYSBERT: This is the day in the life. This  
11 is the excerpt that I was going to use. We just put this on  
12 the screen.

13          THE COURT: What was her sitting there in the white  
14 suit and dark?

15          MR. HAYSBERT: That was another portion that we  
16 weren't using at all. We've excerpted this section, which  
17 is a five-second section. It's the same video that you just  
18 saw. She's wearing the same hat. She's got the same white  
19 mask on.

20          THE COURT: This is not the same video that I just  
21 saw.

22          MR. HAYSBERT: Yes, it is, Your Honor.

23          THE COURT: Are you talking about the one that he  
24 presented?

25          MR. HAYSBERT: No, I'm not. I'm talking about the

1 one that I just presented to say that you are saying lacked  
2 context.

3 THE COURT: No. The one that just popped up on the  
4 screen was somebody in a white suit and a black outfit.  
5 Yes, this is what you want me to admit that you put back up.  
6 But that's a different outfit than a day in the life. Then  
7 you represented to the Court that this was part of the day  
8 in the life.

9 My comment was, well, a day-in-the-life video, she  
10 had on one outfit, and the excerpt that you said that you  
11 say is a day in the life is another outfit. Yes, this is  
12 the same outfit of the excerpt that didn't make any sense  
13 that you showed that was five seconds that had no context.  
14 But it's not what was then flashed up as the day in the  
15 life. Flash up, please, for me what is called the day in  
16 the life.

17 MR. HAYSBERT: Your Honor, what you saw is a  
18 picture that began the day-in-the-life video, and I'll go  
19 back to it. That's a picture. That's not a video. This is  
20 a picture. There is no video playing in this image. I  
21 understand that you want to catch me in something, but you  
22 can't. I'm not sitting here trying to lie to the Court. I  
23 would never do that.

24 THE COURT: I'm not trying to catch you in  
25 something, Mr. Haysbert.

1 MR. HAYSBERT: Might feel like it sometimes.

2 THE COURT: You will have to get over that because  
3 what I'm trying to do is to see that the evidence is being  
4 presented properly. That's all I'm trying to do, and this  
5 video that you've just played, number one, she has on a  
6 different outfit than the beginning of the one in the day in  
7 the life.

8 Then you said that this, that you've just presented  
9 to the Court, was part of the day in the life, or I may not  
10 have understood you. Then they are saying they have never  
11 seen this, that they have only seen the day in the life.  
12 What I'm trying to find out is where this video is and how  
13 it was produced and to whom.

14 MR. HAYSBERT: Your Honor, the portion of the video  
15 that I showed you earlier is part of the overall  
16 day-in-the-life video, which is six minutes long.

17 We excerpted it from the-day-in-the-life video and  
18 put it separately in the thumb drive. We also put the  
19 before-the-incident happened five-second video as a separate  
20 excerpt in the thumb drive.

21 Now, I don't know what happened to those two  
22 excerpts, but they were there when I sent them. How long  
23 with the entire six minutes -- sorry, the day-in-the-life  
24 video and the brain animation. There were four things on  
25 that file. I know that they were there, and I'm

1 representing to the Court as an officer of the Court that I  
2 know that they were there, and I sent that FedEx package on  
3 Saturday of August 5th.

4 THE COURT: We have been through it. We have been  
5 through the receipts. The receipt says that it is going to  
6 arrive on the 8th. So regardless of where it originated in  
7 Malibu with the label and when you took it in, we let all  
8 that go. We went with the receipts that specifically said  
9 it left on Monday the 8th to arrive on the 9th. There is an  
10 actual Federal Express and a tracking number there. So that  
11 is past history.

12 The relevant thing here, let's assume for a minute  
13 you sent all of it. The question becomes, has it been  
14 properly listed as an exhibit, and I would rule that it has  
15 not, and you cannot now use something that nobody has seen  
16 before that you just happened to Federal Express in a  
17 package -- let's assume you did that -- to the other side.  
18 So somebody doesn't have it straight with the Court. They  
19 claim they've never seen it.

20 Now, I would like for Ms. Haysbert to take the  
21 stand and at least as a proffer put this in context as to  
22 what we are seeing because it's not understandable to the  
23 Court as to what we are seeing.

24 Mr. McKelvey, can you offer any illumination on  
25 this issue? Are you aware of this video and it being

1 produced?

2 MR. McKELVEY: I wasn't involved in that aspect of  
3 it, Your Honor. It does appear to me -- the-day-in-the-life  
4 video had multiple sections, multiple excerpts. It appeared  
5 to me when I heard it that that last little you heard, when  
6 it was played the first time, I thought was the narration of  
7 the-day-in-the-life video picking back up after the excerpt  
8 was shown. So it was -- the only thing I would say is that  
9 even though the context of the entire day-in-the-life video  
10 was ruled upon, this was listed as a component, these are  
11 the entire day-in-the-life video in the exhibit list.

12 So in a different form it was listed because it's  
13 part of what -- a broader group of paperwork that was filed,  
14 but I understand the Court's thinking. It wasn't listed as  
15 an excerpt. I understand that. I think that's where the  
16 confusion is coming from.

17 THE COURT: If this is a part of the  
18 day-in-the-life video, the Court has ruled on that. So if  
19 this is a continuum, and you are trying to show overcoming  
20 this to that, the Court has ruled on that. That ruling is  
21 final for the Court. But let's establish at least what this  
22 is.

23 Over a year ago the video on the day in the life  
24 was ruled out. The excerpts, whatever they are, the day in  
25 the life was not anything the Court expected as an exhibit



1 or the defendants expected as an exhibit. To the extent it  
2 was sent this week, that doesn't then make it become  
3 evidence. You're trying to rehabilitate your own witness,  
4 and I understand it. But the problem is, you've got to do  
5 it with exhibits that are known. Go ahead and establish  
6 with Dr. Haysbert when this was.

7 MR. HAYSBERT: Sure. Your Honor, if I just may, we  
8 talked about this extensively with Judge Krask. What he  
9 ruled then was the entire day-in-the-life video could not be  
10 included. But he did not rule out excerpts of that video  
11 from coming in. That was what we discussed with him at the  
12 final status conference, and I believe the transcript is  
13 somewhere.

14 BY MR. HAYSBERT:

15 Q. So, Dr. Haysbert, can you tell us what this is? Can you  
16 orient us as to time and place and location and what you're  
17 doing here?

18 A. I was introducing -- as the portion of it that we heard  
19 faded, I was introducing Miss Hampton, which is a student who  
20 has been selected by the university to represent the  
21 university as Miss Hampton. We introduce that person during  
22 homecoming. I was asked to step in for the president to  
23 introduce her.

24 As I introduced her, it was a matter of my just  
25 being able to say her name, what department she represented,

1 and her classification, and I forgot, which is what typically  
2 has begun to happen to me. I forgot what department she was  
3 from. There was a young lady sitting up front, Barbara. She  
4 told me, School of Education -- School of Business, and  
5 that's when I paused, look, she said, and I then said School  
6 of Business.

7 Q. What year and month?

8 A. That was homecoming of last year. Homecoming was either  
9 in October or November.

10 THE COURT: Can I see the video again? Because it  
11 just stops.

12 MR. HAYSBERT: Yes, Your Honor. The reason it  
13 stops is because we only included the portion of the video  
14 and nothing more for purposes of objections to only to what  
15 was said in the video. I showed you that particular portion  
16 she was describing. Can you turn up the volume.

17 (Video playing.)

18 MR. HAYSBERT: Would you like me to repeat it, Your  
19 Honor?

20 THE WITNESS: I had totally forgotten what  
21 department the student was from.

22 THE COURT: I'm not going to admit the video. I  
23 can't find it anywhere in the list. If you're going to  
24 continue the whole thing, I mean, you are taking it out of  
25 context. It has to be put into context, and I don't know

1 what happens after that, and you've got this, what Judge  
2 Krask ruled was out, was this commentary where I believe  
3 you're commenting on the day in the life, and you've got  
4 some commentator back there saying, "And this is." You've  
5 made the video trying to illustrate her deficits, but it  
6 just stops, and I don't know where it continues, if Miss  
7 Hampton came up there or what.

8 Number one, it's just an excerpt, and we will enter  
9 it into as a rejected exhibit. It does not make any sense  
10 when you look at it, and I accept that she can testify as to  
11 the date and what it was, but it just starts and it clips  
12 off at the end, and you don't know what happens, and then  
13 you have somebody's voice coming in there saying, basically,  
14 making a commentary.

15 That's the way I'm determining it, but the problem  
16 is a day in the life has been ruled out; and, number two, if  
17 it is part of the day in the life, it's ruled out, and if it  
18 isn't, it hasn't been listed in any exhibits anywhere that  
19 were going to be used in this trial. So, no, you may not  
20 use it.

21 MR. HAYSBERT: Thank you, Your Honor.

22 THE COURT: Bring the jury back in.

23 (Jury in at 2:49 p.m.)

24 THE COURT: I do need to make a comment for the  
25 record, but I'll reserve that to our next break.

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1           Mr. Haysbert, you can resume the redirect of  
2 Dr. Haysbert.

3           MR. HAYSBERT: Thank you, Your Honor.

4                           REDIRECT EXAMINATION

5 BY MR. HAYSBERT:

6 Q. Dr. Haysbert, just wanted to clarify a couple of things  
7 with you that may have gotten lost here. So it is your  
8 testimony today that you've only ever had one bout of  
9 vertigo, correct?

10 A. That's correct.

11 Q. And this bout of vertigo happened sometime in 2017,  
12 correct?

13 A. That is correct.

14 Q. Okay. And, Dr. Haysbert, regarding the headaches that  
15 you experienced that were shown in the medical records, did  
16 those headaches begin before you fell at the Outback  
17 Steakhouse or after?

18 A. After I fell.

19 Q. Okay. Thank you very much. Now, the other thing I  
20 wanted to focus on is the dizziness that are replete  
21 throughout the records. Can you explain what that is talking  
22 about, what Dr. Chinniry is talking about with that?

23 A. I honestly cannot explain to my full understanding. The  
24 dizziness, I don't know whether his records are talking about  
25 dizziness associated with vertigo or just -- I can't fully

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1 explain that.

2 Q. So let me ask the question. When you have vertigo, what  
3 were you experiencing with the vertigo?

4 A. The time that I had vertigo, I threw up, regurgitated.  
5 That's what connected vertigo for me.

6 Q. And you described the room as spinning, as if it was an  
7 earthquake?

8 A. That's what happened.

9 Q. Now, let's bring you up to the Outback Steakhouse  
10 incident. When you walked in, were you experiencing  
11 dizziness at the time?

12 A. Absolutely not.

13 Q. Did you have a headache at the time?

14 A. No, I did not.

15 Q. Did you have vertigo at the time?

16 A. No, I did not.

17 Q. When you walked -- as you were walking one to two steps  
18 past the hostess stand, did you have any feeling of nausea?

19 A. None.

20 Q. Any dizziness?

21 A. None.

22 Q. Any headaches?

23 A. None.

24 Q. Any vertigo?

25 A. No.

1 MR. HAYSBERT: No further questions.

2 THE COURT: Then, thank you, Dr. Haysbert. You may  
3 step down.

4 THE WITNESS: Thank you very much.

5 (Witness excused.)

6 THE COURT: Mr. McKelvey or Mr. Haysbert, your next  
7 witness.

8 MR. HAYSBERT: Thank you, Your Honor. We would  
9 like to call Dr. Filler to the stand.

10 THE COURT: I think there are a number of issues  
11 that remain. Do you have another witness you can call?

12 MR. HAYSBERT: Your Honor, we would like to call  
13 Dr. Filler at this time.

14 THE COURT: I know, but there are some legal issues  
15 that remain.

16 MR. HAYSBERT: The concern with him is that he is  
17 coming from out of state and is on a very limited time  
18 schedule, and this is the only time that we can put him on  
19 the stand. There is no other time.

20 THE COURT: I understand. But we've got to resolve  
21 certain matters before he can testify because he won't be  
22 able to complete his testimony unless we resolve those  
23 matters. So, ladies and gentlemen of the jury, you'll have  
24 to step back out. I'm sorry.

25 (Jury out at 2:53 p.m.)

1           THE COURT: I just wanted to add two matters to the  
2 record, and I'm not expecting any response. I'm just adding  
3 the matters to the record so that it's clear. To the extent  
4 that the day-in-the-life video is at issue, that was not  
5 admitted, and it has not been admitted. It's been on a  
6 final pretrial order for a year now. So to the extent that  
7 this was some excerpt in it, then it's not admitted because  
8 this video, as I understand it, shows a before and after and  
9 has a narrator.

10           So to the extent it is an excerpt of that video, it  
11 has not been produced or listed that that excerpt was going  
12 to be used, and I would further note that on the Court's  
13 thumb drive, which I did view, the only thing on there was  
14 the animation. There were no excerpts on the thumb drive.  
15 I expected from the other day that the same thumb drive the  
16 Court had been sent was going to the defense counsel.

17           I personally viewed the thumb drive, as did my law  
18 clerk, and there was nothing on the thumb drive but the  
19 animation. So I don't know what was on the thumb drive that  
20 was sent, but, in any event, if it was a day in the life  
21 that had not been admitted, if it was an excerpt from the  
22 day in the life that has not been admitted, nor had it been  
23 produced, and so, consequently, it has either been ruled as  
24 inadmissible and/or not produced. It certainly wasn't  
25 produced to the Court in the thumb drive that the Court

1 received and personally viewed.

2 So let's now go to Dr. Filler. So let's talk about  
3 Dr. Filler. As I understand it, you all have passed up so  
4 many different briefings and things to the Court during the  
5 course of this trial, I want to be sure that I have in front  
6 of me what you are talking about. No, these were through, I  
7 believe, Mr. McGavin.

8 MR. HAYSBERT: Sure. My understanding is that you  
9 also wanted to speak with Dr. Filler.

10 THE COURT: I do, but we are not there yet. Just  
11 trying to get things sorted so that we are not all over the  
12 place when Dr. Filler comes in. I want to be sure we are on  
13 the same page with the objections. So you need to give me a  
14 minute to sort all of these papers that have been passed up  
15 to me.

16 The first thing that I want you to do, Mr. McGavin.  
17 Mr. Haysbert, if you would please be seated.

18 Mr. McGavin, you are at the podium, and if you  
19 would please repeat the objection that you have as well as  
20 the authority that you have cited in your trial brief, which  
21 just came in. I didn't receive it until lunchtime and late  
22 at lunchtime.

23 MR. MCGAVIN: Thank you, Your Honor. Your Honor,  
24 we have a number of reasons why Dr. Filler should not be  
25 permitted to testify in this case now that Dr. Haider is not



1     testifying. I would ask that the plaintiff's Rule 26(a)  
2     disclosure of Dr. Filler and his report be made an exhibit  
3     for this record, and I have a copy to tender so it can be  
4     properly marked as an exhibit.

5             THE COURT: Can you please tender it.

6             MR. McGAVIN: Thank you.

7             THE COURT: This is the 26(a) disclosure. I also,  
8     if you remember, I had last week all of the expert -- I know  
9     the reports can't come in, and I had ruled that, but I still  
10    wanted to read the report to be sure when they testified  
11    they were in the parameters of what they had reported and  
12    now to be in the parameters of the expert disclosure.

13            So you say it's not within the parameters of the  
14    26(a) (2) disclosure?

15            MR. McGAVIN: What I'm saying is, Your Honor, that  
16    Dr. Filler's opinion does not, first of all, have adequate  
17    foundation. The designation, the pleading merely  
18    incorporates the report. On the first page of the report,  
19    the entire history, record view, interview with the  
20    plaintiff, none of that occurred.

21            THE COURT: I realize that.

22            MR. McGAVIN: There is one paragraph. It says,  
23    "Indication," which I'll read into the record. "This is a  
24    71-year-old woman, who on 5-23-2018, was at a restaurant,  
25    and when she got up from the table, she slipped and fell on

1 what was described as a slippery floor, impacting her head,  
2 with some loss of consciousness and the onset of neurologic  
3 symptoms, a number of which have persisted."

4 He does not say which ones. He doesn't even have  
5 the facts correct. She was not at a table. He references  
6 no medical records which he has reviewed. So all he does is  
7 essentially perform a diagnostic study, a DTI, and based  
8 upon the DTI, he talks about statistically possible  
9 conditions which may be present. Those are summarized at  
10 the second to the last page of the report under,  
11 "Impression," and "overall impression."

12 THE COURT: What page?

13 MR. MCGAVIN: It's not numbered, Your Honor.

14 THE COURT: I see it. I've got it.

15 MR. MCGAVIN: And as you read through this, it's  
16 clear that it violates *Vilseck v. Campbell*, among many other  
17 cases, which require experts to talk about diagnosis and  
18 causal relationship to a reasonable degree of medical  
19 certainty.

20 So in that impression and overall impression,  
21 Dr. Filler, first of all, points out that this is generally  
22 normal routine brain imaging which some expansion of the  
23 left occipital horn of the lateral ventricle which may  
24 reflect, may reflect some prior volume loss. He also says  
25 extensive flare abnormalities of unclear clinical

1 significance not specifically related in location to the  
2 areas of the fractional anisotropy losses.

3 As he continues through his report, he talks about  
4 "expected effects." Those are a theory, not confirmed by  
5 physical examination or interview of the patient or review  
6 of any other healthcare providers' records. If that was  
7 done, it is not in his report. And if he comes to court  
8 today to talk about reviewing all the records, we  
9 strenuously object.

10 THE COURT: Well, I think then the best way to  
11 proceed, to maximize our time, is your objection, you made  
12 one I think yesterday morning, and you've made it again  
13 today. I think the best thing is for Mr. Haysbert or  
14 Mr. McKelvey to call Dr. Filler to put him under direct  
15 examination, and when he goes outside of these things -- he  
16 first has to establish that he's qualified, and he has to  
17 establish what he reviewed and what opinions he formed and  
18 the basis of those opinions.

19 So that would be the first thing, and then,  
20 obviously, you can object, and we can hear this, but I think  
21 we need to move along and get him in to at least hear what's  
22 going to be -- what is proffered at this juncture.

23 MR. MCGAVIN: Will that be in the presence of the  
24 jury or outside the presence?

25 THE COURT: No, outside the presence of the jury.

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1 MR. MCGAVIN: Thank you, Your Honor.

2 MR. HAYSBERT: Thank you, Your Honor.

3 THE COURT: Dr. Filler, if you'd please come  
4 forward and be sworn.

5 (Out of the presence of the jury.)

6 (Witness was sworn.)

7 AARON FILLER, PH.D., called by the Plaintiff,  
8 having been first duly sworn, was examined and testified as  
9 follows:

10 DIRECT EXAMINATION

11 BY MR. HAYSBERT:

12 Q. Dr. Filler, thank you for being with us today.

13 A. You're welcome.

14 MR. HAYSBERT: Your Honor, if I may proceed.

15 THE COURT: Certainly.

16 BY MR. HAYSBERT:

17 Q. Dr. Filler, what is your profession?

18 A. I'm a neurosurgeon.

19 Q. Do you have a medical specialty in the work that you do?

20 A. Well, I specialize both in -- well, nerve, spine, and  
21 then also brain imaging.

22 Q. In addition to being a medical doctor, in what field do  
23 you have a Ph.D.?

24 A. The Ph.D. is in biological anthropology.

25 Q. And you also have a JD, correct?

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1 A. Yes.

2 Q. What is an FRCS?

3 A. It's a Fellow of the Royal College of Surgeons. So in  
4 England, after becoming a physician, there is an actual  
5 qualification to become a surgeon, and so tests and training,  
6 you can become a Fellow of the Royal College. Very few  
7 Americans have that, because you have to go through the  
8 British training, and I had enough that I was able to -- and  
9 I was invited to be in that college of surgeons.

10 Q. And an FRCS is the Fellowship of Royal College of  
11 Surgeons?

12 A. Yes.

13 Q. Were you retained by my office to share with the jury  
14 your medical opinions on certain matters related to  
15 Dr. Haysbert's brain and the fall at Outback Steakhouse?

16 A. Yes.

17 Q. Have you completed your work?

18 A. Yes, I have.

19 Q. And have you formed your opinions?

20 A. Yes, I have.

21 Q. Are you prepared to give them to the jury?

22 A. I am.

23 Q. Before I ask you what those opinions are, can you please  
24 share your education and experience with the Judge so that  
25 she knows what weight to give to the opinions you intend to

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1 express today.

2 A. So as you indicated, I have the M.D. degree. The Ph.D.  
3 was done at Harvard, and out of that work came the invention  
4 of diffusion tensor imaging, the method that we will be using  
5 today, and that goes back to sort of 1980, 1982.

6 And then my training includes also an eight-year  
7 neurosurgical residency down in Seattle, and also a year of  
8 complex spine fellowship at UCLA, and a fellowship in complex  
9 peripheral nerve surgery, and also a year of neuroimaging  
10 fellowship. And then from that point I joined the faculty at  
11 UCLA in neurosurgery.

12 Q. The faculty of UCLA in neurosurgery?

13 A. Yes.

14 Q. And how long have you been on the faculty?

15 A. I was there for five years, and then I left UCLA to be in  
16 private practice and joined the -- it's not a regular faculty  
17 but Cedars-Sinai as a similar structure.

18 Q. Please tell the Judge what you did to gather information  
19 to perform research or study, whatever you needed to, in  
20 order to form your opinions here today.

21 THE COURT: Basically, I think what we need to do  
22 is what you relied upon. He said his qualifications but  
23 what he relied upon to express any opinions regarding  
24 Dr. Haysbert.

25 THE WITNESS: So in this particular case, my

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1 clinical information came from Dr. Huma Haider and her team  
2 at the National Brain Injury Institute, and I should say  
3 that the way which they prepared their reports are something  
4 I had set forth, so I showed them how to work more like  
5 how -- to do the things I require and how to ask the  
6 questions I like to see so that in a part they were acting  
7 in my path in collecting information. I relied on that for  
8 the clinical information rather than seeing the patient  
9 myself, which I more typically do.

10 In addition, I carried out a brain MRI, which  
11 included the diffusion tensor imaging or DTI methodology  
12 that I developed, and I evaluated the DTI results in light  
13 of the clinical information to reach my opinions.

14 BY MR. HAYSBERT:

15 Q. And what were those opinions in this case, Dr. Filler?

16 A. The history suggested what I called persistent  
17 post-concussive syndrome, meaning somebody has fallen, they  
18 have hit or abruptly accelerated their head or been subject  
19 to some force, shockwave, for instance, in this case the  
20 impact, and that there are abnormalities seen in the image  
21 which are typical of a -- what I call a mild traumatic brain  
22 injury, and the patient has ongoing symptoms that are typical  
23 of a post-concussive pattern.

24 Q. Thank you. How did you test traumatic brain injury in  
25 this case specifically, and how is that different from what

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1 other doctors do?

2 A. So increasingly now the DTI is used to evaluate traumatic  
3 brain injury, and I should say, you know, I write -- I'm an  
4 editor for a major textbook in neurosurgery and write the  
5 textbook chapter about how to approach this so that 50,000  
6 neurosurgeons around the world, we -- what I set forth as how  
7 to approach this, and I put questions on the board  
8 certification exam and the review book for the board  
9 certification exam.

10 So in a sense I create the technology. I have vast  
11 experience. I have a paper coming out with a thousand  
12 patients where we compare their images to their findings  
13 where I've examined, assessed the patients, examined the  
14 images, and taken these together, and out of that knowledge,  
15 you know, I provide guidance to other doctors on how to  
16 approach these problems.

17 Q. Thank you.

18 MR. HAYSBERT: So your report -- if we could bring  
19 up Dr. Filler's report, Your Honor. Would that be okay?  
20 Would you just like him to proffer?

21 THE COURT: No, just let him testify.

22 MR. HAYSBERT: Sure. Okay.

23 BY MR. HAYSBERT:

24 Q. We are going to let you testify, Dr. Filler, if you  
25 wouldn't mind. If you need your report, let me know.



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1 THE COURT: When you talk about his report, what  
2 are you talking about? Because you know the excerpt reports  
3 don't come in. So what do you want to show? Is it the  
4 animation?

5 MR. HAYSBERT: Yes. If you want to see the  
6 animation, I would be happy. I think what the issue is, is  
7 he can show us what his opinions are through the use of the  
8 brain animation as well as your report, if necessary.

9 THE COURT: He can't use his expert report.

10 MR. HAYSBERT: Not in front of the jury. This is  
11 for you, Your Honor.

12 THE COURT: Just go ahead, and you can ask him what  
13 he relied on and what opinions he formed and how he formed  
14 them.

15 MR. HAYSBERT: Okay. Sure.

16 BY MR. HAYSBERT:

17 Q. What did you rely on, and what opinions did you form, and  
18 how did you form them, Dr. Filler?

19 A. In this case the task that I had, in evaluating  
20 Dr. Haysbert, was as an imaging physician that is not as an  
21 expert report. So I prepared a report of her image findings  
22 and my impressions of those as a neurosurgical imaging  
23 physician. And to clarify that, unlike a lot of other types  
24 of doctors, neurosurgeons read their own images and have a  
25 higher duty in interpreting the medical image than a

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1 radiologist.

2           An example I like to give is if a neuroradiologist  
3 says there is a herniated disk at C5/6, but it's actually  
4 C6/7, and I go and operate at the wrong level, because I  
5 can't get to say the neuroradiologist told me to, I'm  
6 responsible for looking at the image and getting it right.

7           So the report that I'm specifically referring to  
8 is the dictated report that I prepared, having seen the  
9 clinical work from the initial evaluation from NBII,  
10 Dr. Haider, and my work on the image. I spent about three to  
11 four hours processing and evaluating the images and preparing  
12 that report.

13           So that is my -- that was the output in this case.  
14 And sometimes I'm asked to write an expert report or a --  
15 respond to a motion *in limine*, write an actual response or  
16 even a -- something close to a pleading. But in this case it  
17 was truly a medical imaging report from -- incorporating my  
18 role as a neurosurgeon, meaning that I'm looking at symptoms  
19 as well as findings.

20 Q. What were your findings?

21           THE COURT: I'm sorry, Dr. Filler. When you say a  
22 medical imaging report, what are you talking about? What  
23 medical imaging report were you looking at?

24           THE WITNESS: So we have a single document, which I  
25 think is available as evidence.

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1 MR. HAYSBERT: Yes. Well, it is available to the  
2 Court, but I don't think that's something that comes in as  
3 evidence for the jury.

4 THE WITNESS: I see.

5 BY MR. HAYSBERT:

6 Q. The report is available for you to review and track  
7 along?

8 A. So, yes. Then I did -- there was also a -- there was a  
9 PowerPoint where I incorporated some images from her -- that  
10 I looked at that I think illustrate the key findings.

11 Q. We have that as an exhibit.

12 A. That exhibit will show. So I want to focus on one  
13 particular finding that I state very affirmatively is there,  
14 and it is a finding, which the good medical word here is  
15 pathognomonic, p-a-t-h-o-g-n-o-m-i-c (sic), meaning that you  
16 see that, it must be a certain type of cause and effect.

17 And that injury is an injury in a structure called  
18 the crus of the fornix, f-o-r-n-i-x. And when that is  
19 injured, it impairs the ability to form new memories, and she  
20 had that injury, and that impacted her ability to do her  
21 work, in my opinion, subsequently, and based on, I did look  
22 at her deposition.

23 THE COURT: Well, that's what I want to know. You  
24 are forming these opinions. What did you look at? You did  
25 not examine her, did you?

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1 THE WITNESS: I examined her brain.

2 THE COURT: What did you use to examine her brain?

3 THE WITNESS: So we obtained, under my direction, a  
4 DTI/MRI. So that's an MRI with the additional advanced  
5 view. What does the DTI show that a regular MRI doesn't  
6 show? What it shows --

7 THE COURT: You didn't examine her. What were you  
8 using? Was it her brain scan? What was it? That's not  
9 clear. That's what I'm trying to clear. You have to be  
10 clear to the jury. Do you see what I'm asking?

11 THE WITNESS: I do, yes, Your Honor. Thank you.  
12 Yes, I examined her brain image. I processed and examined  
13 her brain image.

14 THE COURT: Where did you get that from?

15 THE WITNESS: I had her go to an image center, I  
16 think most likely Houston Medical Imaging, I think is the  
17 location. Several we use around the country. And they have  
18 a set of directions from me. It's like -- it's a page of  
19 numbers and parameters that show them exactly how to run the  
20 image, and we work with image centers where I've trained the  
21 technologist, my people, in quality assurance.

22 So you follow those protocols, and it generates a  
23 set of what would amount to usually about maybe 2,000 image  
24 frames, looking at the brain in various ways, and that is  
25 what I look at. So that image gets loaded into software,

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1 based in part on technology I developed, that allows us to  
2 see the internal structure, the brain. So I'm looking at  
3 cross-sectional slices through the brain of various type of  
4 MRI sequences.

5 I am looking at a type or a quality of brain health  
6 called FA, or fractional anisotropy, a-n-i-s-o-t-r-o-p-y,  
7 which is a component of the DTI methodology, and I am  
8 looking at the tracts of the brain through in tractography,  
9 which are visible images of the connections of the brain.  
10 So I'm looking at image cross-sections of various types, T1,  
11 T2, flair, SWI, which bring out different contrasts and  
12 features of injury, and I am looking at a set of images  
13 wherein the fractional anisotropy, the FA, right when it's  
14 very healthy, darker, when white matter is less healthy, and  
15 measuring the exact fractional anisotropy in a set of  
16 standard location to assess the health based on a comparison  
17 to normals based on what I've published in textbooks as to  
18 normals, and I am looking at the tracts of the brain to see  
19 if there is any breach or interruption in the connection  
20 between two separate points in the brain wherein the breach  
21 and the connection is in such a location and such a pattern  
22 that it appears to me to be traumatic, based on my  
23 experience and knowledge.

24 BY MR. HAYSBERT:

25 Q. And, Dr. Filler, if you could tell us, what did you

1 specifically see in Dr. Haysbert's brain that you were about  
2 to start talking about, and can you render your opinions or  
3 based on what you examined her brain?

4 A. So there is a number of findings, but I'm going to  
5 concentrate on one, which is perhaps most exemplary, and as I  
6 mentioned, it's to do with the fornix. What this does is --  
7 so normally, of course, all the time, a tremendous amount of  
8 sensory information is pouring into the brain, but we don't  
9 report all of it. And the constant basis, this structure is  
10 involved in saying, well, isn't that interesting? Let's save  
11 that. I want to remember that, remember that. And the way  
12 it works is there is a -- in the campus and fornix of the  
13 temporal lobes, it's always thinking of things in the past,  
14 what's interesting, and every time it decides to form a  
15 memory to save something, it sends a signal back up in the  
16 fornix around in this curve, and then it turns forward and  
17 reaches the anterior subthalamic nucleus, which is the  
18 shutter button of the brain attaches the image.

19 That pathway is partially fractured in  
20 Dr. Haysbert's brain. Now, I will say that that pathway is  
21 narrow and thin. It travels the back and upward parts  
22 surrounded by the full mass of the brain, and then it emerges  
23 out of the solid brain to where it is surrounded by fluid,  
24 it's in the ventricles, and then it goes back into the solid  
25 brain at the anterior subthalamic nucleus.

1           And what happens in the trauma, particularly  
2 lateral, is the part of the fornix, that is surrounded by  
3 fluid, whips around while the part in solid does not, and  
4 they get a breach or a bruise, what I call a fractional  
5 anisotropy bruise right at the point where it emerges from  
6 solid to liquid.

7           So that is why I say it is pathognomonic because the  
8 tissue is the same on either side, but the break or the  
9 damage occurs at a point where there is a mechanical  
10 transition surrounded by fluid versus by the full mass of the  
11 brain, and she has that. She has a breach in the crus of the  
12 fornix at the point of transition from a solid surrounding to  
13 liquid surrounding, and that breach causes her to fail to  
14 form memories as normally as she would.

15           THE COURT: Let me stop you just for a minute. Do  
16 you know how that fracture got there?

17           THE WITNESS: I believe I do.

18           THE COURT: You believe you do? Tell me how you  
19 believe you do.

20           THE WITNESS: I believe that having that fracture  
21 would be incompatible with the type of employment that she  
22 had, which was a high position administration in the  
23 university, and that after the injury, this particular  
24 problem -- and she describes it in the deposition. She says  
25 people will come to me and ask a question, and I start

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1     answering, and I realize I can't remember what they ask, and  
2     I try to trick them into asking the question again because  
3     she can't remember.

4             And eventually -- when people have this also, it  
5     will combine with some of the other effects of trauma, one  
6     of the typical effects from the particular area of the  
7     frontal lobe that she had injury, so people get excessive  
8     anger. Some get increased anxiety, depending upon the  
9     associated other injuries, and some get depression.

10            So the people with anger, for instance, patients  
11     that try to go back to work, the -- one guy tried to go to  
12     work in the truck stop, and check-out guy at a counter, and  
13     the customer would say I'd like, you know, a bag of chips  
14     and cigarettes, some gum and come back with --

15            THE COURT: Okay. I'm not trying to interrupt you,  
16     but I'm trying to move this along. What I'm basically  
17     asking you is, how do you know it came from any fall at  
18     Outback Steakhouse?

19            In other words, did you look at brain images before  
20     the fall and after the fall? Do you know of any other  
21     accidents that she had? In other words, your opinion, I  
22     know you say there is this condition there, and this is what  
23     this condition results in. What did you review to be able  
24     to testify about the causation, that she has this? There's  
25     got to be causation that it resulted from the fall at



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1 Outback Steakhouse.

2 I don't know if you studied her previous medical  
3 history, her history subsequent to or before this scan that  
4 you looked at. I mean, do you have before and after? What  
5 is your basis for knowing this is how this occurred?

6 THE WITNESS: So, obviously -- thank you, Your  
7 Honor. That does frame pretty well. So, obviously, the  
8 standard would not be that we have to watch the football  
9 player hit by the car in front of the stadium and see his  
10 leg bend as he falls in order to be able to say, well, if he  
11 was playing football before he got hit by a car, and he's  
12 got a fractured femur, I believe -- even though I wasn't  
13 there -- that's what they told me -- that he broke his  
14 femur, and the reason he's not running is because his femur  
15 is broken, and it was caused by the car hitting him. So I  
16 don't have to be there, but what's a fair inference in  
17 developing the cause here?

18 And my standard is, particularly in someone with a  
19 high performance type of work or any other, would have the  
20 background from the history, if they have a finding in the  
21 brain which will definitely cause a particular symptom, and,  
22 one I sometimes rely, just as the Court has to do on the  
23 patient saying it started that day, and they actually -- I  
24 usually have them sign a kind of an affirmation of that. Is  
25 this true? That's what they say.

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1 But I also rely on, is this something that could  
2 have been going on prior, given the patient's occupation?  
3 So I guess that in this case I would rely on the assertion  
4 that I've seen in, I think in the Haider reports and  
5 certainly in her testimony, in Dr. Haysbert's testimony,  
6 that her ability to remember things and do -- as imparting  
7 her work, deteriorated after the fall, and the fall was a  
8 key point in the onset of these symptoms.

9 So I always look at the patient's stated the  
10 symptoms begin at that time, and doctors have to do that,  
11 because we don't always get to investigate. It's fair  
12 enough to determine the cause, and particularly in this  
13 case, I'm acting as a physician, not a forensic  
14 investigator.

15 THE COURT: So your opinions, are they  
16 possibilities? Are they given with a reasonable degree of  
17 medical certainty? Dr. Haider's report is not coming in at  
18 this trial, and she's not testifying. So can you base your  
19 opinion not on what Dr. Haider did?

20 THE WITNESS: Sure. So when I'm preparing a  
21 medical document that's intended for use in a legal  
22 proceeding, I will use the words "reasonable degree of  
23 medical certainty or probability." In a normal medical  
24 report, you don't use those words. We just say, "It's my  
25 impression," or this is. In this case I use that sort of

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1 language. Sometimes we just use the word "could," it could  
2 have happened, and that means it's a possibility, it could  
3 happen.

4 In this case, in several of the findings, I say  
5 this would be expected to be due to, so essentially I'm  
6 asking should I treat. The person has something, is this  
7 condition, is this image finding causing that symptom, would  
8 be expected to sufficient greater than not, more likely than  
9 not. So I have would, and then the fornix injury, I say  
10 with greater confidence that this -- I have to see the words  
11 in front of me, but it's on Page 3 of the report, that this  
12 is caused by this injury, and it will cause -- will result  
13 in this memory impairment.

14 THE COURT: It's on Page 3 of your report?

15 THE WITNESS: Yes, the imaging report.

16 THE COURT: Can somebody hand him the report? So  
17 in this case you formed your opinions, and to which one of  
18 these that you refer, possibility, would, or will? What  
19 degree of certainty have you formed these opinions about  
20 Dr. Haysbert from looking at a brain scan that was done?  
21 Because you did not examine her herself, and you didn't take  
22 any history or any of that. You relied on some records, and  
23 then you looked at the brain scan. So I just want to know  
24 to what degree of certainty? That's very important.

25 THE WITNESS: Yes. And I have to say, if we could

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1 project it. There is -- because it's small to begin with  
2 and small here. Is that possible, Your Honor?

3 THE COURT: Sure.

4 THE WITNESS: Thank you.

5 THE COURT: What page are you on?

6 THE WITNESS: It will be Page 3 of the report.

7 MR. HAYSBERT: Your Honor, if I may, you keep  
8 saying, you know, you didn't examine. He did mention  
9 several times that he examined the brain.

10 THE COURT: Right, the brain scan that was taken in  
11 Houston.

12 MR. HAYSBERT: He did an examination.

13 THE WITNESS: If I could answer that particularly  
14 because Your Honor has raised it, that obviously classically  
15 before we had imaging, like we do now, you'd examine the  
16 external publication of skin. When I image a patient, I am  
17 examining them. I'm just able to see the brain to the body.

18 THE COURT: I understand. You examine the imaging  
19 of the brain that was taken in Houston. I understand that  
20 completely.

21 THE WITNESS: Can we project that?

22 MR. HAYSBERT: Yes.

23 THE COURT: You can put it on the projector here.  
24 Show this to the witness. Pass over what page he's looking  
25 at.

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1 THE WITNESS: It's going to be the third page of  
2 this report. If you have it in full-size format -- as you  
3 have it in the book there, I could read it.

4 THE COURT: I don't think it's the same.

5 THE WITNESS: It's literally Page 3 of that report.

6 THE COURT: Is it the one that starts with the  
7 heading "Tractographic Impression."

8 THE WITNESS: Tractographic finding. Yeah, about  
9 halfway down the page, I'm talking about the fornix.

10 THE COURT: But that's the page you're on?

11 THE WITNESS: Yes.

12 THE COURT: That's the page I'm on, too.

13 THE WITNESS: If you brought up that one page  
14 there, this is one of these.

15 THE COURT: Yes.

16 THE WITNESS: It's shrunk down to size.

17 THE COURT: It's the expert report, and it's the  
18 page that looks like this (indicating).

19 THE WITNESS: Tractographic impressions, yes, Page  
20 3.

21 MR. MCGAVIN: I can put it up there, if we just  
22 turn on the docket camera.

23 THE COURT: We can put it on the projector.

24 MR. MCGAVIN: It has my notes, but that's okay.

25 THE COURT: I can give my page.

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1 MR. MCGAVIN: That's okay. It's highlighted.  
2 There you go.

3 THE COURT: So what are you referring to,  
4 Dr. Filler?

5 THE WITNESS: Right. So the line is 12, "Losses  
6 appreciated," the last two words in that line. It says,  
7 "Losses appreciated in the right crus of the fornix and the  
8 left pillar of the fornix on detailed formal tractographic  
9 evaluation of the fornix, and the limbic system reveal  
10 abnormalities which will have the expected effects of  
11 impairment of new memory formation. Overall, these findings  
12 demonstrate multiple abnormalities with expected effects on  
13 cognition, emotional behavior, and neurologic functions are  
14 as identified above."

15 So and, "The degree of injury appreciated would be  
16 expected to result in clinically significant symptoms. And  
17 the locations and types of injury are consistent with the  
18 mechanics of the trauma as described."

19 So in particular, though, with regard to the fornix  
20 injury, I say it will have the expected effects of  
21 impairment of the memory formation. And in -- the way I  
22 would write in different formats, that medically is as  
23 strong or stronger than saying reasonable degree of medical  
24 probability, not an extreme degree of medical probability or  
25 absolute, but that's my use of words.

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1 MR. HAYSBERT: Certainty, not probability.

2 THE WITNESS: Yes.

3 THE COURT: So what is it? With a reasonable  
4 degree of probability, with a reasonable degree of medical  
5 certainty?

6 THE WITNESS: Certainty. Expected effects.

7 BY MR. HAYSBERT:

8 Q. And you found those effects in Dr. Haysbert, correct?

9 A. Right. I'm saying these injuries, just like you see a  
10 femur fracture, expected effect would be pain and difficulty  
11 walking. Calcaneal fracture, same thing. But here you have,  
12 I'm saying with this image finding, and it's pretty striking  
13 when you see the image, the disruption, in my view, it would  
14 have the expected effect of impairing new memory formation,  
15 which, again, I agree that the weakness in it is only what if  
16 she they developed memory failure before, but it's a  
17 particular type of memory.

18 So people get global memory loss, like in  
19 Alzheimer's disease. This is not that. It's this new memory  
20 formation issue, which is not absolute; it is relative. It's  
21 part of the fornix is still intact, and so that is typical of  
22 trauma, particularly with much of the rest of the brain  
23 intact.

24 And as I testified earlier, I rely on the fact of  
25 the type of work she was doing before and that I don't think

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1 this would be compatible with her having reached her level of  
2 responsibility and a skill in her field with that impairment,  
3 and she complains of it affecting her ability to work  
4 subsequently, and that kind -- those kind of failures, when a  
5 person has increased anxiety after trauma, that creates  
6 episodes of anxiety, just like people with the excess anger  
7 when they make these errors.

8 THE COURT: So when did you make this report? What  
9 is the date of it? It looks like it was 2020.

10 THE WITNESS: 2020, yeah. September 2020, yes.

11 THE COURT: With this injury that you are  
12 describing and her position, then would you expect her to  
13 continue on in this position, in the same position?

14 THE WITNESS: Yeah. So I have many professional  
15 patients that try to continue in their jobs and are having a  
16 hard time of it. I think one of the things that you sort of  
17 get from Dr. Haysbert's deposition, I see this in some  
18 patients, some people, maybe they're an artist or writer,  
19 they're not doing as well. Other people have other people's  
20 lives in their hands, and they get to worrying, will their  
21 impairment make them fail to adequately serve the people  
22 that they are responsible for helping?

23 So this -- often they will seek medical care, and  
24 we do treat this, and the technology, with this level of  
25 certainty in 2020, now today we have some dramatic



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1 improvements in the ability to go in and repair these things  
2 that's happened over the last year. So, you know, it's been  
3 very useful to do this work. And I do think, because now I  
4 have patients who are able to treat and repair and see not  
5 only the expected effect when you fix that spot, that  
6 symptom goes away.

7 THE COURT: So then it's potentially not permanent?

8 THE WITNESS: That is correct. It's not always  
9 fixable, but the main thing coming out of that work is that  
10 we do highly targeted treatments and are able to cause  
11 neural repair in damaged circuits, and you see the patients  
12 improve and report improvement and get back to their jobs,  
13 and hence, of course, life satisfaction.

14 THE COURT: Anything else, Mr. Haysbert?

15 BY MR. HAYSBERT:

16 Q. How many times have your DTI studies been permitted in  
17 courts, Dr. Filler?

18 A. Well, I think they are pretty much universally being  
19 accepted. I mean, myself, in terms of *Daubert* challenges,  
20 there have been two or three, California, Montana, State of  
21 Washington, California, Texas.

22 Q. How many times have you been qualified in courts?

23 A. As a witness, so I've probably testified in trials about  
24 80 times.

25 THE COURT: State, Federal Court, both?

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1 THE WITNESS: A mix. A number of Federal Court  
2 testimonies.

3 BY MR. HAYSBERT:

4 Q. Is it your opinion, to a reasonable degree of medical  
5 certainty that Dr. Haysbert suffered a traumatic brain injury  
6 in this case?

7 A. Yes.

8 Q. Is it also your opinion that Dr. Haysbert suffered this  
9 traumatic brain injury from a sudden impact consistent with  
10 the fall?

11 A. Yes. As I said, the type of fornix injury she has, if  
12 you look at the picture, you may form the same opinion, but  
13 you're not used to looking at these, is what I call, as I  
14 said before, pathognomonic, meaning this comes from a lateral  
15 impact trauma, and there is nothing else that will cause  
16 exactly that, why that spot.

17 Q. So it couldn't come from old age?

18 A. It did not come from old age.

19 Q. And it couldn't have come from some type of just gradual  
20 process over time?

21 A. No, because it's so focal, and the fornix looks great on  
22 either side of it.

23 Q. So it was like a shearing process, like something --

24 A. Abrupt lateral movement of the fornix in the ventricle so  
25 that it causes this traumatic bruising injury at the point

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1 where it's, fixated by the whole mass of the brain, so right  
2 at that transition point.

3 Q. You said you reviewed Dr. Haider's report, correct?

4 A. Yes.

5 Q. Is her report consistent with your findings here?

6 A. Yes. And, as I said, I indicated questions that you  
7 should ask, and the questions they ask include the questions  
8 of how memory formation and that it was a new onset problem.

9 THE COURT: Mr. Haysbert, I wouldn't let you, in  
10 front of the jury, go into Dr. Haider's report or her  
11 findings, because she was listed as a witness, you were  
12 given every opportunity for her to be here, and you withdrew  
13 her as a witness in the case. So her opinions and her  
14 report are not coming in, so he can't say that he relied  
15 upon Dr. Haider because the jury won't know anything about a  
16 Dr. Haider.

17 MR. HAYSBERT: Understood.

18 BY MR. HAYSBERT:

19 Q. I have one more question for you, Doctor. So do you  
20 compare the injured brain areas to the complaints that were  
21 made by Dr. Haysbert, and you found them consistent with the  
22 trauma event, in this case a slip and fall?

23 A. Yes.

24 MR. HAYSBERT: No further questions.

25 THE COURT: I have one question. You said this

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1 fracture. Where is the fracture?

2 THE WITNESS: This is in the area of the crus of  
3 the fornix. I said it's -- it's best described as a  
4 fractional anisotropy bruise. That picture is in there.

5 THE COURT: I just want to know where is it? Is it  
6 on the left side, the right side, the mid-side inside the  
7 brain? Where is it?

8 THE WITNESS: Center of the brain on the left.

9 THE COURT: The center of the brain on the left?

10 THE WITNESS: Yes.

11 MR. HAYSBERT: I was going to say, we can also  
12 provide the brain animation.

13 THE WITNESS: Well, that picture has a arrow on it.

14 THE COURT: I'm trying to move this along to get to  
15 the jury because I know that Dr. Filler is on a schedule.

16 Any inquiry, Mr. McGavin?

17 MR. MCGAVIN: Yes, Your Honor.

18 THE COURT: Okay.

19 CROSS-EXAMINATION

20 BY MR. MCGAVIN:

21 Q. Dr. Haider, in your report --

22 THE COURT: Dr. Filler.

23 MR. MCGAVIN: Excuse me. Thank you, Your Honor.

24 BY MR. MCGAVIN:

25 Q. Dr. Filler, in your report you indicated the following:

1            "This is a 71-year-old woman, who on 5-23-18 was at a  
2 restaurant, and when she got up from the table, she slipped  
3 and fell on what was described as a slippery floor, impacting  
4 her head with some loss of consciousness and the onset of  
5 neurologic symptoms, a number of which have persisted."

6            Is that correct?

7            A. That's what that says, yes.

8            Q. In your report you did not reference reviewing  
9 Dr. Haysbert's deposition; is that correct?

10          A. That's correct.

11          Q. And so you didn't do a supplement, did you?

12          A. No.

13                  THE COURT: Wait just a minute. Then you will not  
14 be able to mention that in your testimony.

15                  THE WITNESS: Yes, Your Honor.

16          BY MR. MCGAVIN:

17          Q. You relied upon her testimony in the deposition in making  
18 the causal connection link, didn't you?

19          A. No. I just pointed out -- wasn't sure if I was allowed  
20 to comment on that, but I pointed out that it confirms and  
21 reinforces that opinion.

22          Q. On the last page of your report, you say -- well, first  
23 of all, you said you do a different report for a radiology  
24 exam, medical exam than you would for court; is that right?

25          A. If I'm asked to prepare a document for court, I will add

1 additional language.

2 Q. This report that you did that was in the designation was  
3 not a report for court, was it?

4 A. It was a report -- yeah, that's right. It's prepared as  
5 a medical report.

6 Q. And in that report you did not use the words "reasonable  
7 degree of medical certainty" anywhere, did you?

8 A. That's correct.

9 Q. And instead, you talk about expected effects, correct?

10 A. Right. I should clarify my answer to you in that medical  
11 reports are always and often used in courts. It's the  
12 difference between preparing a document for a legal audience,  
13 and you can even -- as opposed to a traditional medical  
14 doctor, not that traditional medical documents cannot be used  
15 in court. Right?

16 Q. Thank you. But you used the term "expected effects of  
17 impairment," which indicates it's expected but requires  
18 clinical correlation, correct?

19 A. No. I'm saying that this is expected to cause it in the  
20 information that I have. So a doctor is allowed to rely on  
21 the reports of other doctors for medical as well as legal  
22 use, so you know that when Dr. Haider's people ask the  
23 question, I would have expected to be able to rely on their  
24 clinical information. Now, maybe that's excluded, but that's  
25 what you have to think about.

1 Q. Dr. Haider's report is excluded. She didn't testify.  
2 Her deposition, you did not rely upon. And, in fact, in your  
3 report you made no reference to Dr. Haider's report, did you?

4 A. Well, it's in her stationery, so basically I'm preparing  
5 a supplement to her report, that I'm given a medical role.  
6 I'm just saying that a physician generally doesn't have to  
7 get every aspect of history by inspecting themselves. We  
8 read reports from other doctors.

9 In this case I reasonably read Dr. Haider's report,  
10 and it would be reasonable for me to use the information from  
11 the doctor who would normally -- someone like a neurologist  
12 or brain injury specialist who sends the patient to me, so  
13 particularly in this case, because I've instructed her staff  
14 and herself on helpful questions for them to ask, so I'm  
15 allowed to -- I rely on that as a doctor and --

16 Q. Are you offering a legal opinion here?

17 A. What's that?

18 Q. Are you offering a legal opinion on what you are allowed  
19 to rely upon in court?

20 A. No, I'm saying I'm offering an opinion about what a  
21 doctor relies on, and you are telling me what I can rely on  
22 in court.

23 Q. I'm not telling you anything. I'm asking you questions,  
24 sir.

25 Is it correct, sir, that there is nowhere in your

1 report any history of past, present, or current complaints  
2 for Dr. Haysbert?

3 A. Right. I'm relying on Dr. Haider's associated report.

4 MR. HAYSBERT: Your Honor, this is not required  
5 under the Federal Rules. What is he talking about? Why is  
6 he doing this to my witness? This is not required under the  
7 Federal Rules.

8 THE COURT: What is not required? He gets to  
9 inquire because he can object to him qualifying as an  
10 expert. It's done all the time where the expert is examined  
11 outside of the presence of the jury to determine whether the  
12 expert's opinion is properly supported and the expert is  
13 qualified.

14 MR. HAYSBERT: I understand that, Your Honor, but  
15 in this case he is actually saying in front of you, and I'm  
16 listening to this record being made that he can't rely on  
17 Dr. Haider's opinions, assessment, and evaluation to render  
18 his own opinion, and that is simply not true under the  
19 Federal Rules, and we all know that.

20 THE COURT: Well, how can he rely on Dr. Haider  
21 when nobody is going to know what Dr. Haider said or did?

22 MR. HAYSBERT: Under Rule 703, Your Honor, Bases of  
23 Opinion Testimony By Experts, "The facts or data in the  
24 particular case upon which an expert bases an opinion or  
25 inference may be those perceived by or made known to the



1 expert at or before the hearing. If of a type reasonably  
2 relied upon by experts in the particular field in forming  
3 opinions or inferences upon the subject..."

4 He has just said repeatedly that he took -- told  
5 Dr. Haider these are the sort of things I want you to ask  
6 questions about when you are performing your examination.  
7 She is essentially working for him. He is pulling from that  
8 information and rendering his opinions. That is allowed  
9 under Federal Rules of Evidence 703.

10 THE COURT: Well, we may disagree on some of that  
11 interpretation, but I heard his testimony when he said that  
12 he used Houston, and he gave certain people directions, and  
13 they followed him, and that's how he got the image.  
14 Certainly, that's going to come in.

15 He used the image, and that's what you used, was  
16 the image that was taken. You did not rely, or if you did,  
17 on Dr. Haider's report or opinion, that's not coming into  
18 evidence. You can rely on treatises that everybody can look  
19 at. You can say the treatise that you relied upon. You can  
20 say your experience that you relied upon. He's going to  
21 have to establish how he got the image that he looked at,  
22 because he didn't take the image, he didn't examine  
23 Dr. Haysbert, and he --

24 MR. HAYSBERT: That is incorrect, Your Honor. He  
25 indicated repeatedly that he's examined Dr. Haysbert's

1 brain. What other examination would a neurosurgeon need?

2 THE COURT: Can I finish, or are you going to  
3 interrupt me again?

4 MR. HAYSBERT: Yes, of course, Your Honor. My  
5 apologies.

6 THE COURT: He has said that he ordered this  
7 imaging, or he got this imaging from Houston, and that he  
8 had trained the people, and he told them what he wanted, and  
9 he got that. He examined that imaging. He did not  
10 personally examine the physical Mrs. Haysbert or take any of  
11 the imaging or any other medical records. He got the  
12 imaging.

13 You can, again, mince words, but everybody accepts,  
14 or at least the Court accepts that he got this imaging, he  
15 got it at his direction, and that's what he used.

16 So nobody is saying that he didn't have her come to  
17 California, didn't meet her in Texas. He didn't personally  
18 observe her. He observed imaging, and that's what I'm going  
19 to let him testify to, if he does. That's what he observed.

20 He said how he got that imaging through a place he  
21 uses in Texas. He instructs the people. He got the  
22 imaging. It was his expertise. He looked at that imaging,  
23 and this is what he concluded.

24 I don't understand what is the problem, because you  
25 had an opportunity to call Dr. Haider. She was listed as an

1 expert. She is not being called as an expert. Her report  
2 is not coming in. The only thing that's coming in is the  
3 imaging, and that's what he used.

4 MR. HAYSBERT: And any opinions that he relied  
5 upon, including Dr. Haider's report, according to the  
6 Federal Rules. We can't get around that.

7 THE COURT: You cannot rely on a report that is not  
8 in evidence and is not generally accepted. Well, I've ruled  
9 on it, and we are not going to go through it anymore.

10 MR. HAYSBERT: That's actually not correct,  
11 Your Honor.

12 THE COURT: Dr. Haider is not here. You have  
13 withdrawn her and her report. Both have been withdrawn.  
14 You have withdrawn Dr. Haider. You've withdrawn  
15 Dr. Haider's report. Dr. Haider is not a treatise that is  
16 relied upon.

17 Yes, if they could hear her testimony, and he said  
18 he relied on it, but they can't because it then becomes  
19 you're getting in Dr. Haider's expert opinion when you  
20 couldn't get it in otherwise. That is my ruling. It's  
21 final.

22 MR. MCGAVIN: Your Honor, may I also clarify that  
23 the nature of my objection here is that Dr. Filler's report  
24 has no history. He doesn't put me on notice that he's  
25 relying upon Dr. Haider's report. He has no reference in

1 his report to ever reading the deposition.

2 So what he has given us, and what they have  
3 designated two years ago, is these things would be expected,  
4 could be expected, but they all require clinical correlation  
5 to prove causation. That is what I was trying to -- that is  
6 what is missing from the designation and putting us on  
7 notice.

8 THE COURT: I agree with you. That is missing.  
9 But, also, had Dr. Haider come and testified, and the jury  
10 had heard it and heard her report, I may let him mention  
11 that. I understand that he does not mention, there has been  
12 no supplementation. We have been through this. You have to  
13 supplement the reports, and that's why I asked for it last  
14 week, of all the experts.

15 The expert report does not come into evidence, just  
16 the testimony of the experts, the opinions that were formed,  
17 and all of those and what they relied upon. This isn't an  
18 exclusive list; what the expert relied upon to form the  
19 opinion and what they examined, what the opinion is.

20 But they have to have given you notice in advance,  
21 even if it's a treatise. You have to give the other side  
22 notice in advance so they can look at that treatise.  
23 Experts are examined probably every day in this country;  
24 "You said you relied on such and such a treatise, section  
25 whatever."

1           You can show that to the expert and say, "You say  
2 you relied upon it. Well, what does the treatise say? What  
3 does it mean?" Then you can put an expert on that says  
4 something else.

5           So this is just a red herring, stirring the pot,  
6 because at a threshold level, none of this has been  
7 mentioned. There are no treatises mentioned. He's relying  
8 on his background, his expertise, and an imaging that he  
9 asked to be done.

10           So the ruling is twofold. I just don't want there  
11 to be a slippage in front of the jury. He can't rely if he  
12 hasn't indicated. He did not indicate any depositions that  
13 he relied upon. He did not indicate any other expert  
14 reports that he relied upon. If he hasn't indicated that in  
15 his report, and unless he's supplemented it, he can't now  
16 come into court and add it.

17           In addition to that, you can't cross-examine  
18 Dr. Haider's report, and you have to be able to  
19 cross-examine an expert on what they used and examined, such  
20 as a treatise. So that's my ruling. I feel very  
21 comfortable in that ruling, because it's almost hornbook  
22 law. You've got to, at a threshold level, tell the other  
23 side what you used to form your opinions. If you use  
24 additional things, or you form additional opinions, you have  
25 to supplement. That's reason one.

1 Reason two is that you can't rely on something not  
2 only that you haven't listed but that the other side can't  
3 test. So that he relied on something that Dr. Haider did, I  
4 understand under the Rule there is a lot you can rely on;  
5 treatises. That's always a big issue, and you can rely on a  
6 treatise, but you've got to say what you relied on. You've  
7 got to subject that expert to cross-examination of that  
8 document, and that document is not in evidence, and it's not  
9 a public document.

10 So that's my ruling. Is there anything else?

11 MR. MCGAVIN: Just a last point, Your Honor. Since  
12 he is bound by what's in the report, which he admits does  
13 not meet the legal standard, only a medical standard --

14 MR. HAYSBERT: Objection.

15 MR. MCGAVIN: Mr. Haysbert is objecting.

16 THE COURT: Just keep on. It was not in front of  
17 the jury. Just make your argument to me, and I'll tell you  
18 how I'm going to resolve all this.

19 MR. MCGAVIN: Thank you, Your Honor.

20 In this report, which Dr. Filler admits is written  
21 for medical purposes, not legal purposes, he is a practicing  
22 lawyer. He has a law firm, which is identified.

23 THE COURT: Well, he is not going to give legal  
24 opinions because he's not certified as a legal expert.  
25 Besides, in a case like this, you're not going to have

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1 another lawyer getting on the stand telling the jury what  
2 the law is. So I don't think that should be of concern to  
3 you, Mr. McGavin.

4 MR. MCGAVIN: Thank you, Your Honor. But my point  
5 is, this is written for medical purposes, not legal  
6 purposes. He knows the standard for admissibility of  
7 medical opinions, and what he has given us, and what we have  
8 relied upon is, that his opinions are possibilities without  
9 clinical correlation, and he has not indicated any clinical  
10 correlation in his report and not taken these opinions  
11 beyond possibilities. And so under the case of *Vilseck*,  
12 another case authority we've cited, he should be excluded.

13 I would also point out he is not a treating  
14 physician but a forensic physician, and as Mr. Haysbert  
15 started his examination, he pointed out, "Were you retained  
16 by us," meaning on behalf of the plaintiff, "to do this  
17 review?" So he is held to a different standard than just a  
18 treating physician, and this report and designation fails  
19 that test. Thank you.

20 THE WITNESS: If I could suggest comparison --

21 THE COURT: No. No, sir.

22 My ruling is that you are certainly able, as I said  
23 earlier, to cross-examine Dr. Filler, and you can bring up  
24 all of these points on cross-examination. I think the  
25 biggest issue here, in my mind, is whether you can lay a

1 proper foundation for causation, because I don't know that  
2 there is going to be a proper foundation, just an  
3 assumption, without knowing a full history of somebody. So  
4 I think your biggest problem ultimately with this witness is  
5 causation. That's number one.

6 Number two, the things that you raised,  
7 Mr. McGavin, you can certainly cross-examine on this point,  
8 and then when the testimony is there, there can be a motion  
9 to strike, and if the Court decides to strike the expert's  
10 testimony, then I will do so, inform the jury that it is  
11 stricken. Then if the elements of proof aren't there, then  
12 we go from there.

13 We are belaboring things now and holding up the  
14 jury, and we've got an expert witness that has a schedule  
15 and a plane, and we are going to go ahead and get this in  
16 front of the jury. If it needs to be stricken, and if  
17 Mr. Haysbert wants to appeal, then he'll have an appellate  
18 record of what the testimony is that he can pursue. But we  
19 are going to get the testimony on the record, because this  
20 is not a case that anybody should want to try again.

21 So as far as I'm concerned, we need to get this  
22 record going and get it there and not waste hours of  
23 everybody's time talking about things that can be remedied  
24 at the appropriate time by the Court if necessary.

25 We are going to take a 10-minute recess, and we're



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1 going to come back and do Dr. Filler's testimony.

2 (Recess from 4:01 p.m. to 4:15 p.m.)

3 (Jury in at 4:15 p.m.)

4 THE COURT: All the jurors are back from the break.  
5 I will tell you that we were able to resolve any matters for  
6 continuing to proceed today, but then we had a computer  
7 problem. So we had to have the IT people down to work with  
8 the monitors, and it was the court's system, not the  
9 attorney's, so it was a problem with the court's system.

10 So we are now ready to proceed, and Mr. Haysbert is  
11 calling as his next witness Dr. Filler.

12 MR. HAYSBERT: Yes, I am, Your Honor. And thank  
13 you very much.

14 AARON FILLER, PH.D., called by the Plaintiff,  
15 having been first duly sworn, was examined and testified as  
16 follows:

17 DIRECT EXAMINATION

18 BY MR. HAYSBERT:

19 Q. Good afternoon, Dr. Filler.

20 A. Good afternoon.

21 Q. What is your profession?

22 A. I'm a neurosurgeon.

23 Q. What is that?

24 A. So there are a number of types of doctors that are  
25 involved in the nervous system; brain, spinal cord, and

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1 nerves. And the neuroradiologists will do imaging, who have  
2 seen the patient, and neurologists will see people for  
3 seizures, for instance, and provide medications, but not  
4 necessarily to look at the images themselves.

5 And neurosurgeons, such as myself, will see and  
6 examine patients, review images, and then actually do  
7 treatments, such as surgeries or other types of treatments to  
8 repair problems in the neurological tissues.

9 THE COURT: Can you just pull the microphone up.  
10 You were going to say the same thing.

11 MR. HAYSBERT: I was going to say the same thing.  
12 I appreciate it.

13 BY MR. HAYSBERT:

14 Q. In addition to being a medical doctor, in what field do  
15 you have a Ph.D.?

16 A. The Ph.D. is in biological anthropology.

17 Q. What is an FRCS, or a Fellowship of the Royal College of  
18 Surgeons?

19 A. So in England you have a qualification to be a doctor,  
20 and there's an extra qualification to be a surgeon. I spent  
21 a lot of time in the UK, enough that I was able to be  
22 qualified to get that certification as a surgeon in the UK  
23 with a Fellow of the Royal College of Surgeons.

24 Q. Were you retained by my office to share with the jury  
25 your medical opinion on certain matters related to this case?

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1 A. Yes.

2 Q. Okay. Have you completed your work?

3 A. Yes, I have.

4 Q. Have you formulated your opinions?

5 A. Yes.

6 Q. Are you prepared to give them to the jury?

7 A. Yes, I am.

8 Q. Okay. Before I ask you what those opinions are, can you  
9 please share a little bit more about your education,  
10 background, and experience with the jurors so they know what  
11 weight to give the opinions you are going to be offering  
12 today.

13 A. So I did a bachelor's degree at the University of  
14 Chicago, double major, biology and what they call human  
15 behavior and institution, sort of, sociology. And then I  
16 started medical school at the University of Chicago and, at  
17 the same time, started a master's degree in biological  
18 anthropology, also at the University of Chicago.

19 Two years in, I got the master's degree, took a  
20 break from medical school for five years, went to Harvard to  
21 do the Ph.D. work, which led to some of the technologies that  
22 were used -- we're reviewing in the courtroom today.

23 I then went back to the University of Chicago,  
24 finished the M.D. and the Ph.D. two years later, all at the  
25 same time, and then went on and did an eight-year

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1 neurosurgery residency training program, which included, also  
2 afterwards, one year doing complex spine fellowship training,  
3 a year of special neuro -- advanced neuroimaging training,  
4 and also a three-month fellowship for peripheral nerve,  
5 complex nerve disorders, and in the course of all that,  
6 developed new imaging technologies that I then used in my  
7 regular medical practice.

8 Q. Thank you. Do you charge for your time, Dr. Filler?

9 A. Yes.

10 Q. How much do you charge per hour?

11 A. For a deposition, it's at \$2,000 an hour, and then for a  
12 trial like this, the full day would be \$15,000.

13 Q. You don't work on contingency, correct?

14 A. That's correct.

15 Q. So whatever the jury does has no impact on whether you  
16 get paid or not?

17 A. That's correct.

18 Q. And you have no personal interest in the outcome of this  
19 case?

20 A. That's correct.

21 Q. Is there anything about your background, anything else  
22 you'd like to share with the jury so they know how to judge  
23 the credibility and weight of your testimony today?

24 A. Yeah, I also have a JD degree that --

25 THE COURT: I'm going to interrupt you there. You

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1 do have that degree, but he is not here testifying as a  
2 lawyer or on any legal matters. So that needs to be  
3 clarified, particularly in light of your question, what  
4 weight to give his opinions, because any opinions are not  
5 based on, or should not be based on any legal opinions.

6 MR. HAYSBERT: Absolutely. Thank you very much,  
7 Your Honor, for clarifying that.

8 BY MR. HAYSBERT:

9 Q. You're here to testify in your capacity as a  
10 neurosurgeon, correct?

11 A. That's correct.

12 Q. You are an M.D., medical doctor; is that correct?

13 A. Yes. And in further answer to your question, I would  
14 say, in terms of weight on the medical side, is that I'm an  
15 editor for our major textbook in neurosurgery, and so I  
16 write -- edit, like, 25 or 30 of these chapters. I write  
17 seven or eight chapters. And this is the 8,000-page textbook  
18 that all the neurosurgeons use around the world.

19 So for the technology that we are talking about  
20 here, I actually write the chapters that they learn from and  
21 the questions on the board certification exam and give  
22 lectures to neurosurgeons at various meetings.

23 Q. So it's safe to say that you teach other neurosurgeons?

24 A. Yes.

25 Q. And could you tell us a little bit more about your

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1 background in terms of the sort of academic relationships  
2 you've had in the past as a neurosurgeon.

3 A. Well, I've been on the faculty at UCLA for a number of  
4 years, on the faculty in neurosurgery at the Cedars-Sinai,  
5 and also on the faculty at the University of London for a  
6 couple of years.

7 Q. In your medical specialty, are you able to test for  
8 traumatic brain injury?

9 A. Yes.

10 Q. How do you specifically test for traumatic brain injury?

11 A. Well, aside from, you know, examining the patients, such  
12 as looking for abnormal eye movements and questioning them  
13 about patterns of thoughts and behavior reflecting  
14 concussion, I particularly have advanced the use of this  
15 advanced type of MRI called a DTI, diffusion tensor imaging,  
16 because it allows us to actually see the signs of concussion  
17 in the brain which are invisible in all other methods; for  
18 instance, invisible in a routine MRI.

19 So now we can actually see the signs of concussion  
20 and match them to the patient's symptoms and then use that to  
21 go treat the damaged location and do repair of concussive  
22 injuries.

23 Q. Thank you. So would you consider this type of testing to  
24 be objective testing of abnormalities in the brain?

25 A. Yes. It is a big advance in objectivity for this because

1 with concussions, people could say, well, I can't remember,  
2 or I'm anxious. And how do you really know if that is true?

3 But now we can say, oh, there's the part of the  
4 brain which, when injured, results in anxiety, and it's got a  
5 break in it, and say it looks traumatic, so, therefore, you  
6 have a traumatic injury in a location that when they have  
7 that injury, it will cause anxiety, just like having a broken  
8 femur will give you trouble walking.

9 Q. So you could physically see, from a brain scan that you  
10 created through DTI testing, an image of the brain, correct?

11 A. Yes.

12 Q. And you can also see with the image of the brain any  
13 abnormalities, any sort of breaks or shearing in that brain,  
14 and that can tell you what's going on with that brain,  
15 correct?

16 A. Yes. Different parts of the brain do different things.  
17 It's quite different from a computer that has a vast array of  
18 transistors, and they all can be deployed in different ways.  
19 Certain parts of the brain have specific functions, and to  
20 the degree that now we can see each of these little spots and  
21 see when they're injured, it allows us much more precision.  
22 And, as I said, the upside of that, in the last year, is  
23 being able to go treat and repair concussive injuries.

24 Q. How does DTI, diffusion tensor imaging, differ from an  
25 MRI or a CT scan or CAT scan?

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1 A. It's an advanced type of MRI. I would say it has, what I  
2 would describe as, maybe, some hundreds of times more  
3 information in it than a regular MRI. And we can use that  
4 information to see the more subtle injuries in the brain.

5 Q. Please tell the jury, if you don't mind, what you did to  
6 gather information to perform the research or a study,  
7 whatever you needed to do, in order to form your opinions in  
8 this case.

9 THE COURT: What he relied upon.

10 MR. HAYSBERT: Essentially.

11 BY MR. HAYSBERT:

12 Q. The Judge said it best. What have you relied upon to  
13 make your opinions in this case?

14 A. So my method of evaluating brain injury patients involves  
15 either I see the patient and examine them with a classic  
16 neurologic exam, have them fill out forms --

17 MR. McGAVIN: I object to this. The question is  
18 what did he actually do, and that's part of what we  
19 discussed previously, not what he normally does, but what he  
20 does.

21 THE COURT: Did you do what you just said? Let's  
22 just move this along. You mentioned eye movements and  
23 seeing the patient and having them fill out things. Did you  
24 actually do that in this case?

25 THE WITNESS: No. Alternately, for a number of



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1 patients, if another doctor has done all of that --

2 MR. MCGAVIN: Objection, Your Honor.

3 THE COURT: Sustained.

4 BY MR. HAYSBERT:

5 Q. Okay. So, Dr. Filler, if I can just ask you to tell me  
6 what you specifically did in this case to formulate your  
7 opinions. What did you do?

8 A. So, yeah, I reviewed -- well, I mean, I reviewed the  
9 indications for the study, that is, why another doctor  
10 ordered it, and then examined the brain images and made my  
11 report of what I found as given context by the indications,  
12 which is the section of my report that says why did some  
13 doctor order the test.

14 Q. And the brain images that you scanned and reviewed can be  
15 animated into a demonstrative, correct?

16 A. Yes.

17 MR. HAYSBERT: Your Honor, permission to publish  
18 the brain map for the jury so they can follow along?

19 THE COURT: Go ahead.

20 BY MR. HAYSBERT:

21 Q. As the demonstrative is playing, if you wouldn't mind  
22 sharing with us what is going on, as if we were in a class.

23 THE COURT: Is this imaging of the plaintiff's  
24 brain or just your methodology?

25 THE WITNESS: Well, I have -- there is the

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1 PowerPoint, right, that's all -- includes some of the  
2 patient's images, and I think they use some of those images  
3 in this report as well.

4 MR. HAYSBERT: Would you prefer to use the images?

5 THE COURT: Let's start with the one you were doing  
6 the animation. I just want it to be clear, you need to  
7 clarify whether the images are all or any of Ms. Haysbert's.  
8 You said you had an imaging that you looked at, or are these  
9 just explaining to the jury your methodology for doing these  
10 things?

11 THE WITNESS: Right. And I didn't prepare this  
12 video. I prepared the PowerPoint.

13 MR. HAYSBERT: Understood.

14 BY MR. HAYSBERT:

15 Q. So the animation is based on the brain scans that you  
16 provided --

17 MR. MCGAVIN: Objection, Your Honor.

18 THE COURT: Let's go to what he prepared.

19 BY MR. HAYSBERT:

20 Q. What you prepared. We can go to the image that you  
21 prepared. Do you see what's on the screen, Doctor?

22 A. Yes. I want to go through this because I think it's  
23 going to be helpful to help understand what it is I do and  
24 what we are looking at, comparing their -- actually, the  
25 first -- the DTI images I did in 1992, the very first one,

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1 and then a more modern DTI image that shows the internal  
2 connections and tracts of the brain.

3 See the next.

4 And this is making this point about neurologists and  
5 neuroradiologists and neurosurgeons, as we discussed earlier.

6 We can move on.

7 And this is comparing a regular MRI, their routine  
8 MRI, which doesn't show all these individual internal tracts  
9 in the brain versus a DTI tractogram where you can see  
10 hundreds and thousands of individual strands that are all  
11 merged together into a mass in the regular brain MRI.

12 THE COURT: Just so that we don't have to interrupt  
13 you, when you show these images, if any of them are of  
14 Ms. Haysbert's imaging, you need to let us know. Otherwise,  
15 we are going to assume that these are ones that you have and  
16 you're showing your methodology.

17 THE WITNESS: Yes. I will make that clear, Your  
18 Honor.

19 THE COURT: Thank you.

20 THE WITNESS: So this shows a paper from one of my  
21 colleagues from 1799 --

22 MR. McGAVIN: Objection, Your Honor.

23 THE COURT: Wait just a minute.

24 MR. McGAVIN: We never did go through this  
25 PowerPoint, but it's filled with things.

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1 THE COURT: You didn't indicate in your report that  
2 you relied on this in forming your opinions.

3 THE WITNESS: Well, it's an explanation of -- well,  
4 some of it just shows images to the brain, which we can just  
5 skip to those. This is just explaining some background  
6 about what I do and the terminology. For instance, this  
7 slide says, "Concussion is an old term that goes back 200  
8 years."

9 THE COURT: Just move on to the next slides.

10 MR. HAYSBERT: Okay.

11 THE COURT: I understand your objection, but we are  
12 going to move it along, Mr. McGavin.

13 MR. MCGAVIN: Thank you, Your Honor.

14 THE WITNESS: This is just explaining that I did  
15 this research -- there I am -- and doing some of the imaging  
16 and joining the College of Surgeons in England.

17 Going forward, next slide.

18 And that this DTI is not something that's just  
19 personal that I use. It has been in wide use around the  
20 world. It's used to guide brain surgery and saves tens of  
21 thousands of lives every year. It's a real highly precise  
22 life-and-death technology used in every single hospital in  
23 the world where neurosurgery is done.

24 Next. And next.

25 This compares for a patient a head CT, a brain MRI,

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1 and the brain DTI. You can see subtle things, like the  
2 arrows pointing to the green structure at the top of the  
3 right there, you can see the right and left one is a little  
4 thinner than the one on the other side, and yet you can't  
5 appreciate that at all in a really nice brain MRI. You  
6 can't see that. This is the idea that we can have more  
7 detail. We can see things we couldn't see without it.

8 Next.

9 BY MR. HAYSBERT:

10 Q. So before we move on, I just want to be clear about this.

11 Are you making a distinction between CT scans and  
12 MRIs and DTI testing?

13 A. Yes.

14 Q. In what sense are you making that distinction?

15 A. To show that we have -- that it's accepted detail  
16 technology that gives more information than a regular MRI.

17 Q. So are you saying, just for the record, that you could  
18 see things in a DTI scan that you cannot pick up on an MRI or  
19 a CAT scan?

20 A. Yes, absolutely.

21 Q. Okay. So you could see on a DTI scan, for example,  
22 traumatic brain injuries that may not be picked up on a CT  
23 scan or an MRI; is that correct?

24 A. Yes.

25 Q. Continue.

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1 A. This shows, additionally, the three-dimensional assembly  
2 into tracts or connecting pathways in the brain.

3 Next.

4 This is just about the invention of CT scanning.  
5 That's at the same hospital I worked at in England, again,  
6 having to be able to see inside the brain. You are examining  
7 the interior of the brain, the first scan, the first time we  
8 saw a tumor inside the brain, the very first one, in the  
9 bottom, in the middle there. We are examining the inside,  
10 just as physicians for thousands of years have examined the  
11 exterior of a patient.

12 Next, please.

13 And the first tractogram, 1992.

14 Next.

15 The patent.

16 Next.

17 Q. Am I to understand from these, the last few slides, that  
18 you invented DTI testing?

19 A. Yes.

20 Q. Can you take us through a few moments of --

21 MR. MCGAVIN: Your Honor, there's a screen showing  
22 that directly is contradictory to what we've objected to.  
23 It's being displayed. We haven't gotten there. I know  
24 we're free -- I know what we are doing here but...

25 THE COURT: I know. I sustain the objection.

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1 Let's get to what his testimony is.

2 BY MR. HAYSBERT:

3 Q. Let's move on to the brain scan.

4 A. This is just showing that we can show -- because of this,  
5 we also analyze structural injury to the brain in terms of  
6 the fact the brain is not just a solid piece of Jell-O; there  
7 are some parts that are tough and stiff. There are stiff  
8 membranes that descend down into the brain. There are sharp  
9 edges of the skull on the inside.

10 And so now, with all that detailed information about  
11 injury, we are very concerned with how the brain deforms and  
12 how it moves and twists and why certain -- when it's impacted  
13 or accelerated, and why certain parts of the brain get  
14 injured. Just like when people start to have a stroke, we  
15 expect their arm to get weak and their face to droop. That  
16 doesn't happen in head injury. Instead, people get problems  
17 with memory or problems with excess anger.

18 So it's because of the way trauma happens, the brain  
19 deforms a certain way that would, hence, the study of now,  
20 that explain why certain parts of the brain, as we will see,  
21 for instance, in Dr. Haysbert's frame, get injured.

22 MR. MCGAVIN: Objection, Your Honor.

23 THE COURT: What?

24 MR. MCGAVIN: He's making a causation opinion. I  
25 object.

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1 THE COURT: Okay. Sustained.

2 BY MR. HAYSBERT:

3 Q. Okay. So, Doctor, let me just back up for a second  
4 because you just said a whole lot, and I want to make sure  
5 the jury understands you.

6 So are you saying that you can understand a person's  
7 sort of -- some of the descriptions that they have of the  
8 deficit they are facing, such as, you know, I'm losing  
9 memory, and you can go back and physically see on a brain  
10 image the abnormality in the brain that would suggest or  
11 indicate that sort of memory loss?

12 A. Yeah. Just as I said, if someone is having trouble  
13 walking, and the x-ray shows they have a broken femur, I can  
14 understand why they are having trouble walking. We can see a  
15 tract that's broken, part of the brain in that tract is not  
16 working properly. It's that level of detail.

17 THE COURT: You mentioned earlier you could tell  
18 when something happened. Can you tell when something  
19 happened if you haven't looked at the before and then the  
20 after?

21 THE WITNESS: Well, if a person has clearly a new  
22 symptom, and the new symptom correlates with a new finding,  
23 just like, again, developing in your arm, and I get an MRI,  
24 and there's a tumor there. I can say, well, the tumor is  
25 probably causing your pain, even though I didn't have an MRI



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1 before that showed they didn't have the tumor before. We  
2 have to make a reasonable medical inference.

3 BY MR. HAYSBERT:

4 Q. What data did you create, or that you had a hand in  
5 creating or developing, in order to put together brain images  
6 of Dr. Haysbert's brain?

7 A. The information I had was the indications. That is the  
8 description that I require before I -- I either do it myself,  
9 or I have a neurologist see the patient first, or a  
10 specialist, head injury specialist, and then I have  
11 indications; that is, why do they need the scan, why do we  
12 suspect they have a concussion, why are we doing this, what  
13 are we looking for?

14 And then I do the analysis of the parts of the brain  
15 and see which are injured. And depending on the patient's  
16 background, what type of work they do or history of it that I  
17 know, is this something that clearly is a new onset from the  
18 date of injury? That is, they must have not had the injury  
19 before, given the kind of work they did before.

20 Like someone who has a fracture in their leg, and  
21 they used to work on ladders putting in HVAC systems, they  
22 can't have had the broken leg while they were still putting  
23 in HVAC systems. Similarly, if someone had a part of the  
24 brain involved in math, they could not have been teaching  
25 math in university with this injury, so, if they suddenly

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1 lost it afterwards.

2 So we really match the onset of symptoms, like  
3 anything in medicine, to a finding.

4 Q. So what you are saying essentially is, if you physically  
5 injure yourself by falling on your head, you could possibly  
6 sustain a contusion, right?

7 THE COURT: You are testifying. Ask him a  
8 question.

9 MR. HAYSBERT: Sure.

10 BY MR. HAYSBERT:

11 Q. So the question I have for you is, does that work when  
12 you're doing a diagnostic or an examination of the brain and  
13 you're detecting physical injuries to that brain? Can you  
14 see physical injuries to the brain by looking at a person?

15 A. Not without doing a DTI.

16 Q. Then how are you able to determine that a person has an  
17 injury in their brain if you're not able to look at them and  
18 you're not a DTI tester that has scans?

19 A. The standard in medicine does not require us to have a  
20 prior image in order to interpret a current image. It is  
21 true, if you want to track, for instance, football players or  
22 other sports players, it is great to get a scan -- and we do  
23 this for high school kids sometimes -- get a scan every year  
24 before they hit their head, and then if they hit their head,  
25 you can compare.

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1 But in medicine, we do not say -- we are not allowed  
2 to interpret anything unless we had a prior preinjury because  
3 we'd have to go around and image everyone in the world in  
4 case they have an injury sometime.

5 Certain findings, like I say, the fracture is an  
6 example of one -- the patient was running around playing  
7 football, and now they say they can't, they can't move their  
8 leg, and they have a fracture. So I'm going to say, well,  
9 they probably got the fracture after that last football game.

10 So, similarly, when we see a brain injury not  
11 compatible with the person's work, I would say it's my  
12 opinion that this injury is from -- it matches this symptom.

13 THE COURT: Let's get on to what he did. In other  
14 words, let's get on to the case at hand. This is not a case  
15 involving football players. He said that he got an image, a  
16 DTI image, if that's what you got, of Ms. Haysbert's brain,  
17 and you got that at what location?

18 You got the brain imaging, and it was sent to you;  
19 is that correct?

20 THE WITNESS: Right. It's basically obtained --  
21 it's just an electronic set, and then the electronic dataset  
22 gets transported to me.

23 THE COURT: So it was done, and then it was  
24 electronically sent to you, and that's what you made your  
25 evacuation on?

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1 THE WITNESS: That's correct.

2 BY MR. HAYSBERT:

3 Q. So you examined her brain through the scans that you  
4 received that you evaluated, correct?

5 A. Yes.

6 Q. Can we go to the images?

7 A. Yes. Let's move through -- we'll move to hers. Let's  
8 move ahead.

9 Next. Little further. Little further. One  
10 further. Further. Okay. One more, I'm sorry. One more.

11 So this is part of the analysis of Dr. Haysbert's,  
12 Dr. JoAnn Haysbert's brain. One of the things that we do  
13 here is to do measurements called fractional anisotropy, or  
14 FA measurements of numerous locations in the brain.

15 What you see on the right is a table that shows  
16 for -- I think it's 33 locations that were measured, and the  
17 little colored dots are locations in the brain. Some of them  
18 are standard locations used as reference. Some of them are  
19 selected because they're suspected of being injured.

20 So the little picture on the left shows, in  
21 Ms. Haysbert's frame, this FA, or fractional anisotropy  
22 property of DTI, where the bright yellow is particularly  
23 healthy tracts of the brain, and then the little dots, the  
24 colored dots placed will measure what is the quality of the  
25 brain tissue at that location, and we can compare those

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1 measurements, regions of interest, volumes of interest, as we  
2 call them, to normals and say is it below normal.

3 So in the table, the list of the different parts of  
4 the brain measured, we show these FA, or fractional  
5 anisotropy, measurements, and they can be made by any doctor.  
6 They can be done on various scanners, and they'll come out  
7 the same.

8 Then the standard deviation or the variability, so I  
9 can compare them to normal and say, is it abnormal? Is this  
10 part of the brain injured or not?

11 Q. Next.

12 A. Now, this is part of the image for Dr. Haysbert's brain,  
13 and what we are looking at are her tracts.

14 Let's see the next image.

15 Okay. So the kind of thing we look for, in the  
16 center of the image, running vertically, are these green  
17 stripes called a supracallosal cingulum and, when injured,  
18 can result in anxiety and depression. And she does have a  
19 problem with anxiety.

20 MR. MCGAVIN: Objection, Your Honor. Move to  
21 strike. That's not the claim. That is absolutely denied by  
22 Dr. Haysbert.

23 THE COURT: Sustained.

24 BY MR. HAYSBERT:

25 Q. You may continue.

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1 A. So the next image.

2 MR. MCGAVIN: Your Honor, I just want to be clear.  
3 He's offered a causation opinion. There is no foundation  
4 for it.

5 THE COURT: Sustained. He is not yet qualified to  
6 offer a causation opinion, based upon his testimony.

7 MR. HAYSBERT: Understood.

8 BY MR. HAYSBERT:

9 Q. So we'll go to the next slide.

10 A. So this shows, again, additional images where there are  
11 regions of the brain that are affected, which we point out by  
12 the arrows.

13 And move to the next.

14 MR. MCGAVIN: Excuse me, Your Honor. That says  
15 "anger and irritability." There is no evidence of that, and  
16 I move to strike it. He is offering opinions on injuries  
17 that Dr. Haysbert has not endorsed in her evidence. I  
18 object and move to strike.

19 MR. HAYSBERT: Dr. Haysbert doesn't have to endorse  
20 all the injuries. She is not a computer who is able to spit  
21 out exactly everything that you want to know about what's  
22 wrong with her. What the doctor is showing are objective  
23 images that show abnormalities in her brain that are  
24 consistent with certain problems, such as irritability and  
25 so on.

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1           Now, if you want to get her back on the stand so  
2 she can talk about this stuff.

3           THE COURT: No.

4           MR. HAYSBERT: Well, then, we would have to take  
5 Dr. Filler's expert opinion about what's going on with her  
6 brain based on his examination and the fact that he is a  
7 qualified neurosurgeon.

8           THE COURT: They do not have to accept his opinion.  
9 I instructed them in preliminary instructions that an expert  
10 is qualified if the Court allows to give an opinion, but the  
11 expert's opinion is no more controlling on them than any  
12 other evidence in the case, and ultimately is up to them to  
13 evaluate the expert's opinion based upon all the factors  
14 that I listed. In addition, they can consider his  
15 experience and training. So the jury has already been  
16 preliminarily instructed.

17           As far as I'm concerned, to use your words,  
18 Mr. Haysbert, this would go to his credibility and the  
19 weight of his testimony, if he's testifying about things  
20 that he says are indicated and she hasn't indicated them.  
21 So that's argument.

22           He can testify to it, but it may go to the weight  
23 and credibility that the jury would give his testimony when  
24 they look at it with all of the evidence. That's the  
25 preliminary instruction that the Court gave.

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1 MR. HAYSBERT: Thank you, Your Honor.

2 THE WITNESS: This also shows the images were done  
3 in Santa Monica -- well, Beverly -- Medical Imaging Center  
4 in Beverly Hills rather than Houston. There's different  
5 locations we use.

6 Next image.

7 THE COURT: Where was this one?

8 THE WITNESS: In Beverly Hills, California.

9 Next. Next. Next. Okay.

10 So this is the one injury that is the most at  
11 issue, in my perception here, and what I understand about  
12 many concussive injuries. It is the particular injury that  
13 affects formation of new memories.

14 BY MR. HAYSBERT:

15 Q. So just to be clear, we are looking at Dr. Haysbert's  
16 brain here, correct?

17 A. Yes.

18 THE COURT: Where did you get this image from?

19 THE WITNESS: This is from the images that I  
20 analyzed.

21 THE COURT: How did Beverly Hills come up?

22 THE WITNESS: I can see from the label on it that  
23 that's where the imaging was done. I sometimes do imaging  
24 in Houston, sometimes in Santa Monica.

25 THE COURT: This was earlier when you were



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1 discussing this with the Court, I thought you said it was  
2 done in Houston.

3 THE WITNESS: Well, it was only because Dr. Haider  
4 usually imaged there, but it looks like this one was done in  
5 Beverly Hills.

6 THE COURT: So this one was not done in Houston?

7 THE WITNESS: That's correct.

8 THE COURT: So some were done in Houston and some  
9 were done in Beverly Hills?

10 THE WITNESS: For her imaging, only Beverly Hills.  
11 I was in error.

12 MR. HAYSBERT: There are different imaging centers  
13 around the country, is all he's saying.

14 THE COURT: I know, but it's different than what  
15 the Court understood where this had occurred, but go ahead.  
16 I was surprised to hear Beverly Hills. I have to say that.

17 MR. HAYSBERT: There are head imaging companies all  
18 over the country.

19 BY MR. HAYSBERT:

20 Q. So, Dr. Filler --

21 THE COURT: But...

22 MR. HAYSBERT: Yes, Your Honor?

23 THE COURT: Well, I'll ask you about it later, but  
24 I'm confused because of the foundation, improper, that was  
25 given to the Court, because the Court understood that this

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1 was an actual imaging of Dr. Haysbert's brain.

2 MR. HAYSBERT: It is.

3 THE COURT: That that was done not in Beverly  
4 Hills, and if it was done in Beverly Hills, it was not  
5 mentioned to the Court. That's my concern.

6 MR. HAYSBERT: Okay. I understand your concern. I  
7 think he was just clarifying that he sends it out for images  
8 to be brought to him for evaluation, examination, and that  
9 those images are -- can be done at an imaging center in  
10 anywhere in the country. He thought it was in Houston, but  
11 it actually was done in Beverly Hills, I think was his  
12 testimony. I don't think it's relevant.

13 THE COURT: The Court thinks it is relevant because  
14 what he is basing his opinion on, he said he didn't  
15 personally examine the plaintiff, and when I say "personally  
16 examine," I mean one on one, the eye movements, all of that.

17 His examination was of a brain imaging, and the  
18 brain imaging was of Dr. Haysbert's brain. That is what the  
19 Court understands. Dr. Haysbert is shaking her head yes.  
20 But the imaging, that the Court was aware of, of her brain,  
21 that he relied upon, was done in Houston, and we went  
22 through all of that. Now I am very confused.

23 MR. HAYSBERT: Your Honor, the doctor is a  
24 neurosurgeon who examines the brain through images, and he  
25 conducts an examination, and as part of his examination, he

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1 looks at images of the brain such as this one.

2 THE COURT: I understand. But, Doctor, the image  
3 that you took, that you based your examination on, where did  
4 it occur, of her, with her there?

5 THE WITNESS: In Beverly Hills. I just didn't have  
6 the forming paper in front of me at the time the question  
7 was asked. There's different locations for people I use,  
8 particularly when they are not local to -- not necessarily  
9 local to California.

10 THE COURT: So it was out in Beverly Hills?

11 THE WITNESS: Yes. This is, again, it's  
12 Dr. Haider --

13 THE COURT: I'm just trying to clarify. I'm not  
14 asking you about who and what because that's not a witness  
15 in the case. This was done in Beverly Hills, not in  
16 Houston?

17 THE WITNESS: Yes.

18 THE COURT: All of these images were in Beverly  
19 Hills?

20 THE WITNESS: Yes.

21 THE COURT: The images done in Beverly Hills at  
22 whoever's direction were of Dr. Haysbert's brain?

23 THE WITNESS: Done at my direction, yes.

24 THE COURT: Go ahead.

25 MR. HAYSBERT: Thank you, Your Honor.

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1 BY MR. HAYSBERT:

2 Q. So this is one image of her brain that was done at your  
3 direction, correct, Doctor?

4 A. Yes.

5 Q. Tell us what we are looking at.

6 A. So what we are looking at, the arrows in the center point  
7 to a breach, or break, in the structure that is involved in  
8 new memory formation.

9 And what's going on here is that, we always have a  
10 tremendous amount of sensory information pouring in for eyes  
11 and ears, and we don't record all of it. The brain is always  
12 going, that would be interesting, let's save that, hmm, that  
13 would be interesting, or something triggers the recollection  
14 or interest, and we save it.

15 How does that happen? So the way this works  
16 involves this structure, kind of from the back, and there  
17 are -- the part of the brain called hippocampus, then the  
18 fornix, develops an interest, recognizes something, and it  
19 sends a signal back up in this structure called the fornix,  
20 that goes back, and then it curves around forward, and the  
21 two parts of it come together at the anterior cephalo  
22 nucleus, which is the shutter button, and it forms a memory.  
23 That goes on all the time.

24 And one of the things that can happen in concussion,  
25 and it did happen in her case, I believe --

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1 MR. MCGAVIN: Objection, Your Honor.

2 THE COURT: Sustained.

3 THE WITNESS: -- is that --

4 THE COURT: Sustained.

5 MR. HAYSBERT: Okay, Your Honor.

6 BY MR. HAYSBERT:

7 Q. What I would like to do is redirect you, Dr. Filler. So  
8 if you could go back to what you were saying about the brain  
9 in general, and then if you could focus on the image that you  
10 see here and explain what's happening in this image.

11 A. Yes. So the fornix, when it starts to curve forward, is  
12 surrounded by solid brain tissue, and then it passes into a  
13 part of the brain that just has fluid in it, cerebral spinal  
14 fluid, so it's surrounded by liquid.

15 When there is an impact on the side of the head, the  
16 fornix can whip around, and what we see very commonly is,  
17 right at the point where it crosses from solid surrounding  
18 into liquid, you get a bruise in that little fornix.

19 And that's what's happened here. It's a bruise that  
20 affects the DTI tracting, tract imaging, and it reflects a  
21 real impairment in function. And that type of injury, which  
22 is at the location called the crus of the fornix, right where  
23 it emerges from solid into liquid, in my practice and  
24 understanding of medicine, indicates that it's a result of a  
25 trauma injury, because the fornix itself is the same on

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1 either side. It is only damaged right there because of the  
2 mechanical difference, and that's why I think it's a  
3 mechanical impact. And very common -- everybody I've seen  
4 that has that image complains of problem with new memory  
5 formation.

6 MR. MCGAVIN: Objection, Your Honor, foundation.

7 THE COURT: Go ahead.

8 BY MR. HAYSBERT:

9 Q. Going back to the fornix, you said on both sides it  
10 appears to be stable. Is that what you --

11 A. Yeah. Coming into that area of breach and going out of  
12 it, it seems okay, but right at the point of transition, it's  
13 got this breach in it there that we're pointing out with the  
14 arrow.

15 Q. Let me ask you specific questions about this breach  
16 that's pointing out at the arrow. Is this kind of breach  
17 something that someone would have because of old age?

18 A. No.

19 Q. Is this kind of breach someone would have because they  
20 have dizziness?

21 A. No.

22 Q. Vertigo?

23 A. No.

24 Q. Headaches?

25 A. No.

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1 Q. This type of injury is a physical injury to the brain,  
2 correct?

3 A. Yes.

4 Q. So it's actually there; it's real?

5 A. Yes.

6 Q. Can you see it from the outside?

7 A. No.

8 Q. But it's real?

9 A. Yes.

10 Q. And what you're saying is, Doctor, that this kind of  
11 image can only happen if there is a sudden traumatic event,  
12 correct?

13 A. Yes.

14 Q. And could that sudden traumatic event be a fall?

15 A. Yes.

16 THE COURT: Could it be a car accident?

17 THE WITNESS: Yes.

18 THE COURT: Could it be a bicycle accident?

19 THE WITNESS: Yes.

20 THE COURT: So it could be any number of things.

21 It could be any type of injury that could occur from a fall  
22 or a hit or something like that?

23 THE WITNESS: Yes.

24 BY MR. HAYSBERT:

25 Q. Do you recall when you completed these images and

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1 examined Dr. Haysbert's brain?

2 A. So this image is dated September 18, 2020.

3 Q. Okay.

4 A. That's the day it was taken.

5 Q. Thank you very much.

6 In looking at this image, you can clearly come to a  
7 conclusion regarding what could have possibly happened to  
8 this person's brain, no matter who it is, correct?

9 THE COURT: Wait just a minute. We don't deal in  
10 possibilities.

11 MR. HAYSBERT: Understood.

12 BY MR. HAYSBERT:

13 Q. But you could look at this image, and, regardless of who  
14 the person is, it's going to say the same thing to you; there  
15 is an injury here, correct?

16 MR. MCGAVIN: Objection, form, Your Honor.

17 BY MR. HAYSBERT:

18 Q. There is an injury here, correct?

19 A. As I say, to me, it is like seeing a femur fracture.  
20 There's damage there. I'm going to read it and say, if there  
21 is damage there, and I will say, as I did here, that it  
22 indicates trauma, and that it would be expected to result in  
23 impairment of new memory formation.

24 MR. MCGAVIN: Excuse me, Your Honor.

25 THE COURT: Wait just a minute. What's your



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1 objection?

2 MR. McGAVIN: Objection. What would be expected is  
3 not a causation opinion, does not meet the standard for  
4 admissible expert opinion.

5 THE COURT: Sustained.

6 BY MR. HAYSBERT:

7 Q. So what we are looking at here, Doctor, and thank you  
8 very much for explaining this to us and making it clear for  
9 the jury, so a person whose image is sheared off in this area  
10 between the fornix, this is something that can only happen  
11 with a traumatic event, such as a fall?

12 A. Yes.

13 Q. Can we go to another slide?

14 A. Next. Next. Next. Do you have any more? Next. Next.  
15 I think that's all the images we have.

16 Q. Let's go back to the image. I have a couple more  
17 questions on it.

18 THE COURT: So this fornix injury to the crus of  
19 the fornix, that just results in new memory formation?

20 THE WITNESS: That impairs new memory formation,  
21 yes.

22 BY MR. HAYSBERT:

23 Q. Which, for someone who has an advanced degree, is  
24 significant, correct?

25 A. By --

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1 THE COURT: You can argue that. That's not  
2 something for him to form an expert opinion on. You can  
3 argue that to the jury.

4 MR. HAYSBERT: I'll move on.

5 BY MR. HAYSBERT:

6 Q. So, Doctor, for an image like this, where there is  
7 objective finding of some type of impact, can you look at  
8 another image showing a different part of the brain that has  
9 an impairment and be able to tell us what that means in the  
10 common layperson's terms?

11 Could you tell us there is an abnormality there, and  
12 that means that person's going to be more irritable or not?

13 MR. MCGAVIN: Objection, Your Honor. Speculation.  
14 Beyond the scope of the designation.

15 MR. HAYSBERT: He is a neurosurgeon. He examines  
16 brains all the time. He examined Dr. Haysbert's brain.

17 THE COURT: Rephrase your question.

18 MR. HAYSBERT: Okay.

19 THE COURT: I'm not sure what you were asking,  
20 honestly.

21 MR. HAYSBERT: Sure.

22 BY MR. HAYSBERT:

23 Q. So what I'm asking is, as a neurosurgeon, you can look at  
24 abnormalities in the brain, in different parts of the brain,  
25 and be able to come to a conclusion, based on a reasonable

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1 degree of medical certainty, what is happening in that  
2 person's physical life?

3 MR. MCGAVIN: Objection, Your Honor. It's  
4 non-specific. It's not talking about Dr. Haysbert, and it's  
5 a causation question.

6 THE COURT: It goes outside of his report. You  
7 can't just talk about people in general now. You need to  
8 talk about the specific imaging and his conclusions, any  
9 conclusions with a reasonable degree of medical certainty  
10 from his examination of Dr. Haysbert's imaging.

11 BY MR. HAYSBERT:

12 Q. Is it traumatic brain injury that's shown in this slide  
13 consistent with a patient falling onto her left side and  
14 smacking her head on the floor?

15 MR. MCGAVIN: Objection, Your Honor. Foundation,  
16 "a patient."

17 THE COURT: You've got to establish a foundation  
18 that he knows how this got fractured.

19 MR. HAYSBERT: Okay.

20 THE COURT: "Consistent with"? I may let you do  
21 that, but it still doesn't --

22 MR. HAYSBERT: I'll ask the question again.

23 BY MR. HAYSBERT:

24 Q. Dr. Filler, is this sort of image for Dr. Haysbert's  
25 brain consistent with a slip-and-fall accident?

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1 MR. MCGAVIN: Objection, Your Honor, foundation.  
2 It's not consistent. That's not the test for admissibility  
3 of expert testimony.

4 THE COURT: I understand. All I'm going to let him  
5 say is "is it consistent with," and then I'm going to  
6 require some follow-up questions.

7 THE WITNESS: Yes.

8 THE COURT: When you say it's consistent with, it's  
9 consistent with all those other things that I mentioned,  
10 too.

11 THE WITNESS: Yes.

12 THE COURT: In other words, bicycle falls, car  
13 accidents, whatever. So it's consistent with falls, is what  
14 you testified to before, or a certain kind of fall that then  
15 would cause this injury?

16 THE WITNESS: Right. And this is why doctors like  
17 to have an indication in their report, and just as this  
18 report has indication, "Patient reporting symptoms after a  
19 fall." This is all through the imaging doctor, yes.

20 BY MR. HAYSBERT:

21 Q. And you received the indication requirement in this case,  
22 correct?

23 A. From the referring doctor, who's listed on the report as  
24 Dr. Haider.

25 Q. What was the indication that you received?

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1 THE COURT: Sustain the objection. Dr. Haider is  
2 not testifying, and Dr. Haider's report is not coming in.

3 MR. HAYSBERT: He is not relying on Dr. Haider's  
4 report or to her examination. He said that he asked  
5 Dr. Haider to provide him with a clinical indication that  
6 you could use to test whether or not something was wrong  
7 with the brain.

8 BY MR. HAYSBERT:

9 Q. And you asked for that information, and you obtained it.  
10 What would that indication be?

11 MR. MCGAVIN: Excuse me, Your Honor. I move to  
12 strike this entire testimony by counsel. He's testifying to  
13 all of this.

14 MR. HAYSBERT: I'm not testifying to anything. He  
15 indicated in his own report that he received indication.

16 THE COURT: Let Mr. McGavin finish.

17 MR. MCGAVIN: He's testifying to all of these  
18 things. We have a causation issue, which has not been  
19 satisfied. He has not qualified that there's an adequate  
20 foundation to offer this, and I persist in the objection.  
21 Thank you.

22 THE COURT: Do you know how this fracture occurred?

23 THE WITNESS: Just an indication for the imaging  
24 test was provided to me, and I stated in the report -- it's  
25 part of my report -- the indication for which I performed.

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1 And the indication states that, "She's had a fall, slip and  
2 fall, and has onset of concussive symptoms." That's my  
3 indication. So that's why I'm asked, when I see this with  
4 that indication, I'm going to say, well, I think, as I say  
5 in there --

6 BY MR. HAYSBERT:

7 Q. Can we state to a reasonable degree of medical  
8 certainty --

9 THE COURT: Let him finish his answer, please.

10 MR. HAYSBERT: Sure.

11 THE WITNESS: -- that it would -- this would cause  
12 a typical concussive symptom, impairment of new memory  
13 formation, and would be consistent with the history given,  
14 "Patient with symptoms after a fall," how all imaging is  
15 done.

16 Patient comes to the emergency room, has a symptom.  
17 We order a test for that symptom. The imaging doctor says,  
18 oh, patient complaining of this, I did the test, here's my  
19 finding, yeah, we all agree this explains the symptom in the  
20 light of what happened.

21 BY MR. HAYSBERT:

22 Q. What we can also understand from this image is we can  
23 rule some things out, Doctor. You are a neurosurgeon,  
24 correct?

25 A. Yes.

Filler, A. - Direct

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1 Q. You can rule out vertigo from this image?

2 A. This doesn't show vertigo. It doesn't show a brain  
3 hemorrhage. There is no emergency surgery needed. I can  
4 tell what's likely to happen, maybe what medicines might  
5 help, what treatments we now have, and also say it looks  
6 traumatic, that it doesn't look like someone is getting  
7 memory problems or diffuse brain problems from old age.

8 This looks like trauma, and if this started with  
9 that fall, and the indication for which this test was  
10 ordered, then it's my opinion that this indication that  
11 caused this concussive syndrome to get an MRI matches this  
12 image finding. And that's how doctors will do. That's how  
13 we do it.

14 Q. Do you make that opinion to a reasonable degree of  
15 medical certainty?

16 MR. MCGAVIN: Objection, Your Honor.

17 BY MR. HAYSBERT:

18 Q. You can make that opinion to a reasonable degree of  
19 medical certainty. You're a doctor, right? I'm sorry?

20 THE COURT: Go ahead and ask it. I'll let you  
21 cross-examine on the report.

22 MR. HAYSBERT: Thank you.

23 BY MR. HAYSBERT:

24 Q. Do you make that opinion to a reasonable degree of  
25 medical certainty in this case?

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1 A. Yes. In my experience and training, which I should rely  
2 on, is that with that history given to me by the doctor who  
3 ordered the test, this finding that, to a reasonable degree  
4 of medical certainty, that fall caused the image or  
5 concussion, is the cause of this damage, and this will  
6 explain the concussive symptom.

7 Q. This is objective evidence of damage, correct?

8 A. Yes. It's an objective finding that links history to  
9 symptom and the image finding.

10 Q. And this type of evidence is something that may not ever  
11 be picked up on a CT scan or MRI scan, correct?

12 A. Right. And it is how doctors do. You don't send a  
13 patient down to the radiologist saying, I'm not going to tell  
14 you what's wrong with him, image the whole body and see what  
15 you find. We don't do that because it won't result in useful  
16 information.

17 Q. And you can tell by the exact physical injury that you  
18 see in that brain, that you cannot detect with the visible  
19 eye, you can tell that that exact physical impairment goes  
20 directly to memory loss, correct?

21 A. Yes. And just like putting on glasses might help me --

22 MR. MCGAVIN: I object.

23 THE COURT: Mr. Haysbert --

24 MR. HAYSBERT: No further questions.

25 THE COURT: Mr. Haysbert, I'm going to put on the



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1 record your conduct. You just took a piece of paper and  
2 slammed it down hard on a table so that it crackled in the  
3 courtroom and then yelled "no further questions." That  
4 conduct will not be tolerated. Do you understand?

5 MR. HAYSBERT: Yes, Your Honor. But that's  
6 objective evidence. I have no further questions.

7 THE COURT: Well, the way you conducted yourself, I  
8 couldn't even hear the answer. So let the court reporter  
9 read it back. I couldn't even hear the question or the  
10 answer --

11 MR. HAYSBERT: I'm very sorry, Your Honor.

12 THE COURT: There was so much commotion.  
13 Madam Court Reporter, what was the question?  
14 (Record read as requested.)

15 THE WITNESS: What I was trying to say, just like  
16 putting on glasses to inspect the patient's exterior of the  
17 cut, maybe a little more closely, I'm using the DTI to  
18 examine different parts of the brain to see if she has an  
19 injury that we associate with concussion that would come  
20 from a fall as an indication by the ordering doctor.

21 THE COURT: Strike from the record Mr. Haysbert's  
22 yelling out "that's objective," because that's his opinion,  
23 and he's making a conclusion that he's not allowed to make.  
24 He can argue that to you, but he is not allowed to make that  
25 as an attorney and to yell it out to the jury.

1 MR. HAYSBERT: Thank you, Your Honor. My  
2 apologies. And no further questions.

3 THE COURT: Cross-examination.

4 MR. MCGAVIN: May I use the document camera?

5 THE COURT: Yes, you may.

6 CROSS-EXAMINATION

7 BY MR. MCGAVIN:

8 Q. So you showed the jury a slide that says you've  
9 determined by reviewing the brain studies that Mrs. Haysbert  
10 has vertigo, haven't you?

11 A. No, no. I showed -- there's a lot of slides here. The  
12 whole presentation shows a number of different things one can  
13 find. And then that's not her image. Her image would  
14 have -- would state her name on it.

15 Q. Whose image is this, and why would you show the jury  
16 vertigo and photophobia in your deck?

17 A. Well, it's just -- I go through saying all these are the  
18 kinds of things one can see, but in particular this patient  
19 has this. That is how I do the presentation.

20 Q. So you've put in all these slides about possibilities  
21 that have no clinical correlation to Dr. Haysbert; is that  
22 right?

23 A. But as we've shown here, we've tried to show just the  
24 images relevant.

25 Q. Well, then you put this image in and wanted the jury to

1 believe that was relevant, didn't you?

2 A. Well, the slides were prepared for a deposition, which I  
3 think was canceled. That would have been the time to go  
4 through. The context usually is.

5 Q. This isn't a deposition, sir, this is trial, and you've  
6 just showed the jury a piece of a deck, and you're saying it  
7 does or does not potentially apply to Dr. Haysbert. Does it  
8 or does it not?

9 A. Does not.

10 Q. Well, did she have symptoms of vertigo?

11 A. No, as I said --

12 Q. Excuse me. Yes or no?

13 A. I said no.

14 THE COURT: Let him answer.

15 THE WITNESS: If I can testify.

16 THE COURT: Everybody stop talking over each other.

17 MR. McGAVIN: I will, Your Honor.

18 THE COURT: The question is, as I understood your  
19 testimony, you did not conclude vertigo or headaches or  
20 dizziness or any of these symptoms. What you concluded was  
21 that last slide that we saw, that the fracture could lead to  
22 memory loss; is that correct?

23 THE WITNESS: Yes.

24 MR. McGAVIN: Thank you, Your Honor.

25 BY MR. McGAVIN:

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1 Q. Now, in regard to Ms. Haysbert, did you -- were you  
2 provided her records about her situation before the incident  
3 we are here about?

4 A. I don't have extensive records. I know she had a car  
5 accident later, but I don't know about the prior detail. I  
6 don't have a full set of records, no.

7 THE COURT: Was the car accident before or after  
8 this imaging?

9 THE WITNESS: After.

10 BY MR. MCGAVIN:

11 Q. Now, in --

12 MR. MCGAVIN: I'm sorry, Your Honor. Were you  
13 done?

14 THE COURT: Yes.

15 MR. MCGAVIN: Thank you.

16 BY MR. MCGAVIN:

17 Q. Now, in regard to Ms. Haysbert, have you reviewed an MRI  
18 scan of June 4, 2018?

19 A. No. I only have the DTI.

20 Q. Are you aware why she had an MRI scan of her brain done  
21 on June 4, 2018?

22 A. No.

23 MR. HAYSBERT: Objection, Your Honor. This goes  
24 outside the scope of direct examination. And how does this  
25 doctor know anything about a brain scan or MRI that he never

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1 saw?

2 THE COURT: Overruled.

3 BY MR. MCGAVIN:

4 Q. So the foundation of your opinion that you provided in  
5 your report isn't even accurate, is it?

6 A. I'm not sure what you mean.

7 MR. HAYSBERT: Objection, argumentative.

8 THE COURT: It's not admitted, but you and  
9 everybody here knows that for an expert to testify, they  
10 have to give an expert report. There is something called  
11 Rule 26 and expert disclosures, and you give an expert  
12 report, and the expert has to say what he or she relied upon  
13 in forming and writing the report.

14 Then when you go before a jury, reports are not  
15 admissible, and the expert has to testify. What you have  
16 been looking at is what's called a demonstrative exhibit.  
17 It does not come into evidence. It's just a demonstrative  
18 exhibit for the witness's testimony. Frankly, I don't know  
19 when it was prepared, but it was not produced to the Court  
20 and counsel until recently. That's all I'm going to say.

21 It's a demonstrative exhibit. It is not evidence  
22 in the case. His testimony is the evidence, and this is  
23 just to help you understand complicated testimony.

24 BY MR. MCGAVIN:

25 Q. When did you first meet Ms. Haysbert?

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1 A. Only in this courtroom.

2 Q. You mean today?

3 A. Yes. I didn't meet her, but I see her present.

4 Q. You've never spoken to her?

5 A. No.

6 Q. Did you take a history from Dr. Haysbert?

7 A. No. The history was taken --

8 THE COURT: No. You know the rules here.

9 THE WITNESS: No.

10 BY MR. MCGAVIN:

11 Q. Did you have a zoom call with her?

12 A. No.

13 Q. In regard to this, the history that you had for her,  
14 you've indicated that she was at a restaurant and got up from  
15 a table and had a fall; is that right?

16 A. That's just what was provided to me as the indication,  
17 yes.

18 Q. You don't know if that's true or not, do you?

19 A. That's correct.

20 Q. How many different causes are there for momentary  
21 forgetfulness?

22 MR. HAYSBERT: Objection. That is  
23 mischaracterizing the witness's testimony.

24 THE WITNESS: I don't think that is what she has.

25 BY MR. MCGAVIN:

1 Q. How would you know if you haven't examined her and tested  
2 her memory?

3 MR. HAYSBERT: Objection. He has examined her.  
4 So, again, mischaracterizes the witness's prior testimony.

5 THE COURT: From his examination, how would he  
6 know?

7 MR. McGAVIN: Yes.

8 BY MR. McGAVIN:

9 Q. How would you know whether she has memory problems other  
10 than looking at a study?

11 MR. HAYSBERT: Because a brain examination is --  
12 DTI testing is objective evidence of a person's  
13 abnormalities in their brain, as he had previously  
14 testified. So, again, mischaracterizes the witness's  
15 testimony.

16 THE COURT: You can argue that to the jury, and  
17 he's explained how he does the DTI testing. Mr. McGavin is  
18 entitled to cross-examine so they will know how much weight  
19 and credibility to give to his expert opinion. He's in a  
20 proper round of cross-examination right now.

21 BY MR. McGAVIN:

22 Q. How many different causes are there to momentary  
23 forgetfulness?

24 A. Well, it could be -- an infinite theoretical number of  
25 causes, but that's not -- I don't think she has that.

1 Q. I understand that, but if you could just stick to my  
2 questions. How many different --

3 THE COURT: Just ask the question and get the  
4 answer.

5 THE WITNESS: I think I already answered. Can you  
6 read it back?

7 THE COURT: So you don't think she has momentary  
8 forgetfulness?

9 THE WITNESS: Yes.

10 BY MR. MCGAVIN:

11 Q. And how do you test memory?

12 A. Well, you have to --

13 Q. Let me ask it a different way. I withdraw the question.

14 Do you know what neuropsychological testing is?

15 A. Yes.

16 Q. Neuropsychological testing is an eight-hour battery where  
17 a person's cognitive abilities are tested by psychologists;  
18 isn't that right?

19 A. Yes.

20 Q. You're not a psychologist?

21 A. No.

22 Q. You don't administer neuropsychological testing?

23 A. No.

24 Q. Neuropsychological testing also includes validity  
25 measures that test effort; isn't that right?



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1 A. Yes. But here we are looking at objective images that  
2 are broken or not.

3 Q. Excuse me, sir.

4 THE COURT: Let him finish.

5 BY MR. MCGAVIN:

6 Q. All right. Well --

7 THE COURT: I said let him finish.

8 "Here we are looking at..." Go ahead.

9 THE WITNESS: Here -- our validity in an image is  
10 do they have an image finding or not. I'm not being a  
11 psychologist and the imaging physician here, so asking about  
12 my performance of psychology is interesting, but I don't see  
13 how I could be testifying about that if I'm here having  
14 examined her image.

15 BY MR. MCGAVIN:

16 Q. You're objecting to the relevance. Are you wearing your  
17 attorney hat or your doctor hat?

18 THE COURT: Wait. Do not argue with the witness.

19 He's wearing his doctor hat as a neurologist. He  
20 is not wearing his doctor hat as a psychologist. He  
21 answered the question. To his knowledge, there was none of  
22 the nine-hour testing, and that is his knowledge, and he's  
23 not testifying as a psychologist.

24 MR. MCGAVIN: Thank you, Your Honor.

25 THE COURT: If he tried to testify to that, the

1 Court would stop him.

2 MR. MCGAVIN: Thank you, Your Honor.

3 BY MR. MCGAVIN:

4 Q. How many different causes are there to headaches?

5 A. Many.

6 Q. And have you attempted to take a history directly from  
7 Mrs. Haysbert regarding the potential causes of  
8 forgetfulness, memory loss, or headaches?

9 A. As I testified --

10 THE COURT: That's a yes or no question.

11 THE WITNESS: I just interpreted her imaging.

12 THE COURT: What?

13 THE WITNESS: I just interpreted her image. I did  
14 not examine or interview her.

15 BY MR. MCGAVIN:

16 Q. Now, in the report that you prepared, you did not offer  
17 any clinical correlation, did you?

18 A. No. I go through and say what would be expected from  
19 this, other than a -- other than the degree it correlates  
20 with the indication that there was concussion after a fall.

21 Q. Well, you don't have the records from the clinic where  
22 she went two days after the incident, do you?

23 A. I was working with just the indication as given.

24 Q. So it would be fair to say, then, that you don't have any  
25 knowledge and no foundation to understand that two days after

1 this incident, Dr. Haysbert did not report loss of  
2 consciousness or a head injury. You don't have that, do you?

3 A. No, I don't have that.

4 Q. And you don't have the records from Dr. Chinniry starting  
5 on or about July 2018 when Mrs. Haysbert did not report loss  
6 of consciousness?

7 A. Right. The loss of consciousness, if you ask me -- and  
8 you can cut that out of the presentation -- is not -- when  
9 you have injury in the base of the brain, you can get loss of  
10 consciousness, but you can have very severe concussion with  
11 no loss of consciousness.

12 It's just an old-fashioned measure of head injury  
13 that goes back 200 years. That article I was trying to show  
14 from 1799, that's what he said, it's concussion because there  
15 was loss of consciousness. They didn't have much more they  
16 could look at. It's much more advanced now. We can say, oh,  
17 concussion -- what happened was the damage to the memory  
18 circuit; that's why they have this concussive symptom.

19 Q. Well, your report actually -- I'm sorry, were you done?

20 A. No, I wasn't. I was still talking.

21 Q. I apologize.

22 THE COURT: Go ahead.

23 THE WITNESS: I was just saying that if the image  
24 showed something that would result in a concussion that is  
25 not related to loss of consciousness. Loss of consciousness

1 is an index, a sign of the degree of severity of a head  
2 impact, but it doesn't correlate exactly with the locations  
3 of injury and the types and severity of concussion symptoms  
4 afterwards.

5 BY MR. MCGAVIN:

6 Q. Now, you write here in your note, "with some loss of  
7 consciousness." You don't know whether that's true or not,  
8 do you?

9 A. You mean in the indication?

10 Q. Yes.

11 A. That was given to me, yes.

12 Q. But you don't know if that's correct, do you?

13 A. I don't have an independent -- I was not doing a forensic  
14 investigation of the doctor who provided the indication to  
15 me, but I do look -- nothing in the images that I found  
16 relate to the presence or absence of loss of consciousness.

17 Q. And then you say neurologic symptoms, "the onset of  
18 neurologic symptoms," but you don't even say in your report  
19 which ones they are, and "a number of which have persisted."  
20 You don't even say that, do you?

21 A. But remember I'm looking at that large report we don't  
22 allow me to talk about, but it's a detailed report with a lot  
23 of information. You keep asking -- the answer is, yes, I had  
24 that report. It's a medical --

25 THE COURT: Wait just a minute. You need to strike

1 that. We went through that before. It's not listed as  
2 something that was relied upon. It's not being offered in  
3 evidence here, and so we're not going into that.

4 MR. HAYSBERT: I'll renew my objection and make it  
5 a continuing objection.

6 THE COURT: I don't know what your objection is,  
7 but whatever it was, it is, but it's not a new objection.

8 We have gone through this *ad nauseam*, and the point  
9 being is that you have to stick to what you have listed in  
10 your expert report, or what you have told the other side and  
11 the Court what you relied upon. That then has to be, under  
12 Rule 703, it says what it is, and if it isn't admissible,  
13 and there is a ruling that it's not admissible, and there's  
14 a balancing test there. I'm not going to repeat all the  
15 words.

16 The ruling's been made, and we are not going to  
17 keep going back over this, or I'm going to tell the jury why  
18 that information isn't here.

19 BY MR. MCGAVIN:

20 Q. Now, you also talk about the statistical significance in  
21 your report, do you not?

22 A. Yes.

23 Q. And then you talk about how that may reflect problems,  
24 right?

25 A. Yes.

1 Q. And so when you write a report just off of a study,  
2 without meeting a patient and doing a clinical correlation or  
3 reading her records from before or after, you're just talking  
4 about statistical probabilities, aren't you?

5 A. Yes. I mean, for fractional anisotropy, you know, what  
6 we're saying there is that it's statistically significant,  
7 meaning that this structure has an abnormal measurement  
8 which, as I use the phrase in there, "would be expected to  
9 cause a particular symptom." So --

10 Q. So -- I'm sorry. So when you talk about statistical  
11 probabilities, they still require clinical correlation?

12 A. Not this. This is statistical significance. So we have  
13 a normal standard: What should the fractional anisotropy be,  
14 the FA? What should it be for this particular brain  
15 structure? What did I measure? Is it abnormal or not, the  
16 measurement?

17 And the way you determine is, if it's two standard  
18 deviations below the value expected for normal -- so you can  
19 state I'm not saying that likelihood of a bigger symptom, I'm  
20 saying is that an abnormality? Is it a statistically  
21 significant abnormality? So that is just more of a  
22 measurement issue.

23 Q. We're talking about different things. You can say it's a  
24 statistically significant measurement, but whether or not  
25 there is clinical correlation to actual symptoms, you're not

1 doing that in this report. You are providing the statistical  
2 analysis of the deviation from the anticipated normal; isn't  
3 that right?

4 A. No, I'm doing both. I first say -- I'm saying the FAs  
5 are definitely low, and/or I'm looking at a breach in the  
6 tract. And in some cases, I say this would be expected,  
7 which is "likely" as opposed to "could be."

8 Q. This case?

9 A. I say in this case, in this exact -- repeatedly I say  
10 "would be," and if I thought it's just a possibility, I would  
11 say "could be."

12 So it's just medical words as opposed to, if you're  
13 writing for a courtroom -- this is written as a medical  
14 report -- you might say the same thing with different words,  
15 which is to a reasonable degree of medical certainty, which  
16 to me means the same as "would be expected" in a medical  
17 report.

18 Q. To be clear, sir, not once in your report do you say "to  
19 a reasonable degree of medical certainty"; isn't that true?

20 A. Right. That's true. I say it "would be." I say "would  
21 be expected," is the language I used. I just said that.

22 Q. "Would be expected" means to be verified, correct?

23 A. Not necessarily. Just "would be expected."

24 Q. So you expect it, but you can't guarantee it?

25 A. Well, not a hundred percent. I think you can say -- if

1 you have a severed aorta --

2 Q. We are not talking about a severed aorta.

3 A. -- we expect that you would be dead. I mean...

4 Q. We're not talking about a severed aorta, sir. We're  
5 talking about cognitive deficits. Don't you agree?

6 A. Well, we are talking about cognitive brain function  
7 deficits, yes, and we are talking about, when I see an  
8 abnormality in this type of report, then, if I believe it's  
9 certain or more likely than not, I will say it "would be  
10 expected." If I think it's just a possibility, I would say  
11 "could be."

12 Q. Now, have you published -- strike that.

13 In regard to the work that you did here, you were  
14 asked whether or not you were retained by the attorney for  
15 Dr. Haysbert. Mr. Haysbert retained you; isn't that right?

16 A. Right. And I think -- I don't know because it's to my  
17 office, but sometimes we would -- I would just get an image  
18 study and an indication and a neurologist report and read it,  
19 yet sometime later I might have been retained. I know I was  
20 retained eventually, but I don't know if I was retained at  
21 the time I prepared the report. That's what I was saying.

22 Q. Did you hear him ask you with his first question whether  
23 you were retained by him?

24 A. I am retained now, yes. He asked me am I presently  
25 retained, and yes, I am. I'm not sure if I was retained at



1 the time I wrote the report.

2 Q. And in terms of your fee, is it \$15,000 per day?

3 A. Yes.

4 Q. How many days have you been here?

5 A. Just today. I came in -- I arrived at 9:30 this morning.

6 Q. When are you leaving?

7 A. I have a 7:30 flight back right now.

8 Q. And what -- do you fly first class?

9 A. I did in this case, yes.

10 Q. And that's a charge, right?

11 A. Yes.

12 Q. How much income do you make going around the country  
13 testifying in these cases?

14 A. Oh, I'm on a fixed salary, so whether I'm doing  
15 surgeries, injections, testimonies, we have -- I -- it's not  
16 like I'm an academic who's on a fixed salary and then you  
17 have extra money for testimony. We have an operation of  
18 employees, scanners, rents, insurances. So money just comes  
19 in, I work every day and try to -- I try to make -- it really  
20 takes that much, \$15,000 a day, to pay all the employees and  
21 the rents and the leases and all this.

22 Q. What is your salary?

23 A. My salary is, I think, about 550,000 a year.

24 Q. What bonus do you take at the end of the year?

25 A. There's no bonuses.

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1 Q. How many different companies do you have?

2 A. Well, there is -- I'm involved with a medical imaging  
3 practice. I'm involved --

4 Q. How much do you make from that?

5 A. Well, I just -- they basically -- whatever is going on  
6 with the different companies, it goes into a medical service  
7 organization, and then I -- and then I get paid a salary from  
8 that. It's just the standard way to organize.

9 Q. How much do you get paid?

10 A. That's my salary.

11 Q. That's all you make every year?

12 A. Yes.

13 Q. And so you charge \$15,000 for today, and you don't take  
14 out a bonus or some cut of that in your forensic work?

15 A. No.

16 Q. How much of your gross income comes from forensic work?

17 A. Well, it varies from year to year. So prior to the  
18 pandemic, I would say it's about -- grossing across all the  
19 businesses, medical business areas, would be about 15  
20 percent.

21 During the pandemic era, because patients used to  
22 travel from all over the country for some of the special  
23 imaging and treatments I do, but with the pandemic, we had a  
24 big drop-off in travel, of course, and at the same time, say,  
25 an increase in the use of DTI scanning, so that -- for

1 traumatic injury legal cases. So it shifted to the income  
2 being more substantially there.

3 But remember, I'm not just being a medical expert  
4 that reviews papers. I am seeing people and imaging them,  
5 and we're treating and repairing these damages now with the  
6 new systems over the past year, which is a huge advance. And  
7 it's come out of this work. Without this, we would not be  
8 able to -- not be able to do brain repair now.

9 So I'm very committed to it. I write about it for  
10 other neurosurgeons. It's advancing the field, so this is  
11 what I do.

12 Q. I'm just asking you how much money you make.

13 A. I already said it three times, and I said it's the same  
14 each time. 550- a year, 550,000.

15 THE COURT: You don't get any portion of the money  
16 that you make for testimony?

17 THE WITNESS: No, I don't.

18 BY MR. MCGAVIN:

19 Q. What about your --

20 A. Because I'm away from something else, this money -- I  
21 would be working doing medical work today, so from my medical  
22 practice point of view, I took the day off, and there is no  
23 income yet for all the employees, rents. Everything still  
24 goes on. So this is pretty much -- it's maintenance. That's  
25 why it is --

1 Q. Managing partner, Tensor Law, from July '15 through the  
2 present.

3 A. Yes.

4 Q. Is that you?

5 A. Yes.

6 Q. How many lawyers do you have?

7 A. Well, at maximum, we had four.

8 MR. HAYSBERT: Objection. This is outside the  
9 scope of the doctor's medical --

10 THE COURT: He is asking him about his income, not  
11 asking a legal opinion. He's asking about all these places  
12 that he says that he works, I guess simultaneously.

13 BY MR. MCGAVIN:

14 Q. So what kind of law do you do?

15 A. Well, most of it is patents. So, for instance, I do a  
16 lot of appellate patent -- Court of Appeals, the Federal  
17 Circuit, Supreme Court, you know, so I do -- I'm interested  
18 in sovereign patent infringement, so basically states that  
19 are infringing patents, like California, United Kingdom,  
20 United States, things like that.

21 Q. How much income do you make from that?

22 A. I would say little or none.

23 Q. Now, in regard to working with Mr. Haysbert, how many  
24 different times have you worked with him?

25 A. Only this time.

Filler, A. - Cross

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1 Q. Only this time.

2 Now, in regard to the various opinions that you've  
3 rendered here, you also indicated that they may reflect  
4 impairments associated with the mid-brain. You wrote that?

5 A. Yes.

6 Q. So when you say something may result in impairment, that  
7 requires clinical correlation?

8 A. That would be not as certain as "would be expected." It  
9 would be "higher certainty," "could be," "may." It means  
10 that there is a lower correlation of the presence of a  
11 particular image finding and the correlated symptom.

12 Q. All right.

13 THE COURT: I'm looking at your report under  
14 "Impression" and "Overall Impression." What you've said  
15 here, something would be expected to have the effect, and  
16 then you've used here "demonstrates problems," and then  
17 you've used here "which may reflect impairments."

18 THE WITNESS: Right. The highest expectation would  
19 be the "would be." Particularly on the plaintiff's injury,  
20 I say "is expected."

21 THE COURT: So there's a difference between "is  
22 expected," "would be expected," and just "demonstrates  
23 problems," and "may reflect impairment"?

24 THE WITNESS: Yes.

25

1 MR. MCGAVIN: Excuse me, Your Honor.

2 BY MR. MCGAVIN:

3 Q. You don't say "is expected." It says "would be" in your  
4 report. Are you changing your report?

5 A. At that Page 3?

6 Q. It says "would be." It does not say "is."

7 THE COURT: There is no "is" there. It is all  
8 "would be."

9 BY MR. MCGAVIN:

10 Q. So you've misstated your report?

11 A. Let me see that one again. I thought it was stated more  
12 emphatically than that particular finding. I have the  
13 condensed version. It is really small.

14 THE COURT: You can pass up the page. You can have  
15 the page on my report.

16 MR. MCGAVIN: I can show it to him.

17 THE COURT: I may have marked and underlined some  
18 things, Dr. Filler. I see "would be" and "may."

19 THE WITNESS: Yeah, "would be expected to have the  
20 effect of impairment." Yes, so "would be expected," that's  
21 my sort of higher level expectation. Sorry.

22 THE COURT: Beneath "is expected"?

23 THE WITNESS: Right.

24 THE COURT: Okay. So it's "is expected," "would  
25 be," and then "may."

1 THE WITNESS: And then if you have -- if you've  
2 seen -- if I've seen and examined the patient, I might say  
3 "is."

4 BY MR. MCGAVIN:

5 Q. Now, I want to show you this slide that you showed to the  
6 jury. Now, this one is for Dr. Haysbert. You see that?

7 A. Yeah. Those are -- could be, yeah, that locations, yes.

8 Q. Well, did you know she doesn't have depression and  
9 anxiety?

10 MR. HAYSBERT: Objection, mischaracterizing the  
11 witness's testimony, and it assumes facts that are not in  
12 evidence.

13 THE COURT: Overruled. You can argue that if you  
14 want.

15 THE WITNESS: Well, I don't have information on  
16 that.

17 BY MR. MCGAVIN:

18 Q. So you put a slide in here and showed the jury that you  
19 think this study shows that she might, would, could have had  
20 anxiety and depression, but if the evidence were to show that  
21 she doesn't and testified she's had no psychiatric or  
22 psychological care, no medication for anxiety or depression,  
23 hasn't seen a psychologist or psychiatrist --

24 A. Well --

25 Q. Wouldn't that tell you that this slide is incorrect?

1 A. No. The slide, when shown, I say an injury here, these  
2 are all possible. And then what we do is we get -- I'm  
3 showing these are different findings, or I go through what  
4 does DTI show. And so does it show this or does it show  
5 that?

6 Then, as I said, I come to this particular finding,  
7 which, when I explain it, I say, now, this is the key finding  
8 that is important, so I explain it. So I agree that without  
9 explanation, just looking at, you know, you don't get that  
10 difference that I'm just going through and showing the  
11 different types of things that can happen.

12 Q. This one is for Dr. Haysbert also; anger, irritability  
13 and poor multi-tasking, isn't it?

14 A. Now, these are symptoms that can occur with these  
15 findings, yes.

16 Q. But you put a slide in this deck to show the jury that  
17 she had it, it causes it, and she doesn't have those things  
18 either, does she?

19 MR. HAYSBERT: Objection, mischaracterizing the  
20 witness's testimony. Also assumes facts that are not in  
21 evidence.

22 THE WITNESS: I think it's worthy --

23 THE COURT: Overruled. Well, that's the point he  
24 is trying to make. Overruled.

25 THE WITNESS: I'm just saying that I go, yeah,



1 through and say these are things that can happen, and it may  
2 all -- depending on how -- if I present the whole thing, I  
3 wasn't able to present it, it is supposed to make the point,  
4 these are things that one could find, but of these, this one  
5 is the one that was -- is clarifying and is --

6 BY MR. MCGAVIN:

7 Q. Look what it says. It says right here, "Injury to  
8 the" -- that section of the brain -- "causes decreased  
9 interest in interacting with others."

10 MR. HAYSBERT: Your Honor, that's what she  
11 testified to earlier today.

12 THE COURT: Well, that's for the jury to recall,  
13 for you to argue.

14 BY MR. MCGAVIN:

15 Q. Then, "Injury to the frontal lobe results in  
16 anger/irritability and poor multi-tasking."

17 A. Right. I'm not -- remember, as you've pointed out, I'm  
18 not allowed to discuss the clinical information that I have,  
19 but what I'm showing is these are the patterns that are  
20 medical findings. If someone, you know, has a particular  
21 condition, then they were finding in an image that correlates  
22 with this symptom, this correlates with this, this correlates  
23 with this.

24 THE COURT: These are the images that you examined?

25 THE WITNESS: Yes.

1 THE COURT: This is her brain imaging that you  
2 examined and put that on the slide?

3 THE WITNESS: Yeah. And very often, you know, the  
4 way I would put it often is that, you know, she's done well.  
5 She's not complaining of a lot of things, and,  
6 unfortunately, there is one -- this one very problematic  
7 issue in memory formation, she is not able to beat that, so  
8 it's not that she is complaining of everything imaginable,  
9 you know. She has a specific problem, which is demonstrated  
10 on the image, and that's -- because if I didn't show those  
11 slides, we didn't flip through some of them, I didn't --  
12 that's how I use them, is to say these are all the kind of  
13 findings that we look -- we see. But I think it shows that,  
14 you know, she is not excessively complaining, but she has a  
15 particular problem which is found in the image, which is an  
16 impediment.

17 BY MR. MCGAVIN:

18 Q. How do you know she is excessively complaining or --

19 A. -- that she is not.

20 Q. Well, how do you know?

21 A. Well, you are asking me about my knowledge of the  
22 symptoms, and you're telling me right now, you're testifying  
23 to me as to what she has or doesn't have.

24 MR. MCGAVIN: Nothing further, Your Honor. Thank  
25 you.

Filler, A. - Redirect

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1 THE COURT: Redirect?

2 MR. HAYSBERT: Yes.

3 REDIRECT EXAMINATION

4 BY MR. HAYSBERT:

5 Q. Dr. Filler, your brain scans examine a person's brain,  
6 correct?

7 A. Yes.

8 Q. And your brain scans can detect the presence or absence  
9 of physical injury to the brain, correct?

10 A. Yes.

11 Q. And you chose one image to show us what you saw in  
12 Dr. Haysbert's objective findings of brain injury, correct?

13 MR. MCGAVIN: Objection, Your Honor. This is  
14 purely leading.

15 THE COURT: Overruled. Go ahead.

16 BY MR. HAYSBERT:

17 Q. Correct?

18 A. Yes.

19 Q. Okay. Doctor, the image that you showed or any other  
20 images of Dr. Haysbert's brains that you examined, did any of  
21 them --

22 THE COURT: Are there things that you examined that  
23 you haven't told us?

24 THE WITNESS: No.

25 MR. HAYSBERT: No further questions.

1 THE COURT: Then, Dr. Filler, I thank you for  
2 coming, and coming all this way. I don't envy you, but I  
3 wish you a safe and long flight. Remember that you can't  
4 discuss your testimony in the case until it is completed,  
5 and you can't discuss it with any other witness or any other  
6 parties until the case is over. I don't think you will be  
7 called back, but if you were needed further, we would let  
8 you know, and that would come through Mr. Haysbert.

9 I think you might be able to make it. What time is  
10 your plane?

11 THE WITNESS: Might just make it.

12 THE COURT: You might. Airport is not far. We are  
13 not L.A., so I wish you well, and thank you again for  
14 testifying.

15 THE WITNESS: Okay. Thank you, Your Honor.

16 (Witness excused.)

17 THE COURT: Counsel, that brings us to the end of  
18 our trial day. I do have another matter I need to take care  
19 of in the morning, so I don't want to waste your time. I  
20 know you feel like some of it has been, but we really have  
21 been cognizant of your time. If you could be here at 10:30  
22 tomorrow morning, because there is something that the Court  
23 needs to take care of. I should be able to take care of it  
24 by 10:30. It's a matter that needs to be taken care of.

25 But remember what I told you, don't discuss the

1 case with your family or your friends or anyone or listen to  
2 any media accounts or read any news stories, if there are  
3 any. Don't do any investigation of your own, and just put  
4 the case out of your mind and have a pleasant evening with  
5 your family and friends, and have a safe evening. We will  
6 see you tomorrow morning at 10:30.

7 (Jury out at 5:41 p.m.)

8 THE COURT: Mr. Haysbert, who do you anticipate  
9 calling tomorrow? I'm trying to get some planning, because,  
10 frankly, in the Court's schedule, I'd only planned the four  
11 days, and we didn't get started until Wednesday because of  
12 our matters on Tuesday. So I'm trying to plan other matters  
13 and scheduling. So who do you plan to call tomorrow?

14 MR. HAYSBERT: Your Honor, I plan to call the  
15 remaining witnesses. That would be Nineveh Haysbert, Deajah  
16 Clark, Nick Seifert, Norman Chase, and I believe that's all.  
17 If I'm not mistaken, I don't think there is anyone else,  
18 Your Honor. I did subpoena Norman Chase and Nick Seifert  
19 and Deajah Clark for August 9th and 10th. So I would ask  
20 Your Honor to provide some feedback as to what can be done  
21 about that.

22 THE COURT: The way the rules operate is that  
23 unless you told them not to be here, they should have been  
24 here on the 9th, and then you would have asked to have them  
25 recognized by the Court to come back when they were needed

1 so that you don't have them sit there and sit outside. The  
2 way that it would be done would be to have them appear,  
3 unless you've got an agreement from them, and you trust them  
4 to be here, have them appear. The Court recognizes them,  
5 recognizes their subpoena, and directs them to be present  
6 either at a specific time or direct them to be present at  
7 the direction of the attorney that subpoenaed them at a  
8 specific time. So there is nothing that I can do about it  
9 now. I don't know what contact you've had with them.

10 MR. HAYSBERT: They are all here in the witness  
11 room.

12 THE COURT: Well, then you can.

13 MRS. KINNEY: Get them, Your Honor?

14 THE COURT: If they are here, then I'll be glad to  
15 recognize them and tell them to be here tomorrow.

16 MR. HAYSBERT: Appreciate that.

17 THE COURT: Mr. McGavin, you should be ready to  
18 start your defense tomorrow. These may go quickly, and we  
19 need to maximize our time because the schedule is running  
20 over.

21 MR. MCGAVIN: Yes, Your Honor. I've made  
22 arrangements. I'm just trying to figure out if we can get  
23 all the evidence in tomorrow.

24 THE COURT: I don't know how long these witnesses  
25 are going to be or what they have to say. I don't think

1 they will be very long. Maybe Nineveh Haysbert may be, but  
2 I don't know if the others. Pretty quick witnesses, I would  
3 think. They are coming in.

4 You can come forward, if you would, please. If you  
5 will just stand there and identify your name, and then I'm  
6 going to recognize you because you've been subpoenaed, and I  
7 didn't know you were sitting in the witness room, but if you  
8 can tell me your name.

9 MS. CLARK: Deajah Clark.

10 THE COURT: Okay. Ms. Clark.

11 MS. HAYSBERT: Nineveh Haysbert.

12 THE COURT: Ms. Haysbert.

13 MR. SEIFERT: Nick Seifert.

14 THE COURT: Mr. Seifert.

15 MR. CHASE: Norman Chase.

16 THE COURT: Mr. Chase. The Court recognizes you.  
17 Apparently, you were subpoenaed for the 8th and the 9th, but  
18 the case is moving more slowly than what they anticipated,  
19 so you'll need to be back here tomorrow morning. Who are  
20 you going to call first?

21 MR. HAYSBERT: Your Honor, Nineveh Haysbert.

22 THE COURT: Ms. Haysbert, you will need to be back  
23 here tomorrow morning by 10:30, and the other witnesses by  
24 11:00 a.m., so that you will need to be back tomorrow,  
25 because it's quarter to 6:00, and we have finished for the

1 evening. I'm sorry. I didn't know you were in the witness  
2 room. I would have recognized you sooner, but I just  
3 learned that you were here.

4 So you are excused for the evening, and don't  
5 discuss your testimony with any witness who has testified,  
6 and have a safe evening, and we will see you tomorrow  
7 morning. We will get through you tomorrow because we will  
8 stay until we have to. I will give you that assurance. So  
9 you're excused for this evening. Have a nice evening.

10 MR. HAYSBERT: Thank you very much, Your Honor.

11 THE COURT: I assume there is nothing further to  
12 take care of this evening, and we can adjourn. You will  
13 need to be here by 10:30 tomorrow morning. I have a matter  
14 to handle, but I feel 99.9 percent sure that I can get it  
15 done by 10:00, but I didn't want, again, anybody sitting  
16 around and wasting their time. So I'm making it 10:30.

17 MR. HAYSBERT: Your Honor, there is one matter.  
18 It's procedural. So we have a motion -- actually, it's more  
19 of a trial brief on the calendar with the Court, I assume  
20 the calendar, but we filed it, and it's regarding Bloomin'  
21 Brands and the level of control over the instrumentality of  
22 Outback Steakhouse and its floors. So we were wondering if  
23 that is something that Your Honor would be ruling on before  
24 the testimony of Nick Seifert. Potentially he may not need  
25 to testify if that ruling is favorable.



1 THE COURT: Maybe Mr. McGavin can enlighten me.  
2 I'm somewhat surprised over what this issue really is. As  
3 far as I'm concerned, they can present evidence on what the  
4 relationship is, and then after they present evidence on  
5 what the relationship is, you can propose a legal  
6 instruction. Then the jury can decide whether there is  
7 sufficient relationship, and you all can clarify this for me  
8 because it's been a little confusing. There is only one  
9 recovery. It would seem to me that Outback and Bloomin'  
10 Brands can decide who's going to take care of it. They must  
11 have some agreement. I don't know why it has to be an issue  
12 in this case, but I'm not going to give two sets of  
13 instructions, the same instructions for two defendants. I'm  
14 just going to do the instructions plaintiff and defendants,  
15 and I can put a parenthetical around them or just  
16 defendants.

17 I mean, Bloomin' Brands and Outback Steakhouse  
18 ought to know what their relationship is and who is  
19 responsible for what. So I have been a little confused by  
20 it all along. I'm just planning to let the testimony go  
21 forward. You can ask Mr. Seifert who he works for, what his  
22 relationship is with Bloomin' Brands, and Mr. McGavin can  
23 call his witnesses. Then you all can argue for a legal  
24 instruction. In any event, what difference does it make?  
25 Sometimes we have to look at things from a practical

1 standpoint and say there is only one recovery. It's not  
2 like you get to recover twice against both defendants.

3 The form of verdict would just be the plaintiff  
4 versus whatever defendants, and it would say, we, the jury,  
5 find for the plaintiff or we, the jury, find, however it's  
6 worded, I'm not obligating myself, for the defendants. You  
7 can always put a paren around the S. All this procedural,  
8 substantive, but let me hear from Mr. McGavin. I don't know  
9 why we are making an issue out of this.

10 MR. MCGAVIN: Your Honor, I'm not sure it's a huge  
11 issue. It is one recovery. Outback is the responsible  
12 party, and they run, they manage it. It's their shop.  
13 Bloomin' Brands is the national franchisor, but the  
14 responsible party is Outback.

15 THE COURT: As far as I'm concerned, they can work  
16 that out, Outback and Bloomin' Brands, according to, as I  
17 mentioned earlier, whatever kind of agreement they have. If  
18 you hadn't sued them, then defendants' modis operandi would  
19 be to come up and say, but our parent company is. So as far  
20 as I'm concerned, plaintiff acted properly in bringing the  
21 case against both Bloomin' Brands and Outback.

22 MR. MCGAVIN: We have admitted throughout, Your  
23 Honor, that the store is operated by Outback. Outback is  
24 the responsible party. The employees work for Outback. So  
25 it's pretty straightforward in our mind. We don't think the

1 plaintiff needs Bloomin' Brands in the case.

2 THE COURT: Why take them out now? It doesn't make  
3 any sense to me. There is one recovery, and the two  
4 defendants can decide who is liable for that. They can  
5 split it 50/50. They can put it all on one or all on the  
6 other. If you put evidence on, and you argue to me that  
7 it's a legal issue based upon the facts that you've  
8 presented, then you can give me an instruction.

9 MR. MCGAVIN: Okay.

10 THE COURT: So that's the way I look at it. It's  
11 not something that you do now and run the risk of having the  
12 wrong party.

13 MR. MCGAVIN: I don't think there is an issue  
14 there, Your Honor.

15 We do still have our -- just for the -- I know the  
16 Court's heard me on this, but we still do have our motion to  
17 strike the testimony of Dr. Filler on causation, and I  
18 believe that's still under advisement, and I renew that now  
19 that he has concluded his testimony and left the courtroom.

20 THE COURT: I accept your renewed motion. I don't  
21 rule on it. We are going to continue on with the case and  
22 get to that at the appropriate time. In any event, we will  
23 see. I'm going to rule on it tonight. What I am going to  
24 rule on is I'm going to rule that Mr. Haysbert's motion  
25 about Bloomin' Brands and Outback is moot because what's

1 procedural, what's substantive, what's factually based,  
2 what's legally based, I'm just letting it go forward with  
3 both of them. If an instruction is justified to separate  
4 them out, Mr. McGavin can present it.

5 MR. HAYSBERT: Thank you, Your Honor.

6 THE COURT: So basically I rule for you, but I  
7 don't rule for you necessarily the reasons that you put.  
8 That's why I'm afraid to say that, because I don't know that  
9 I agree because federal procedure controls. I believe that  
10 one of the rules you might have cited might be a Virginia  
11 procedural rule. Virginia procedure doesn't control. So I  
12 grant your motion but for different reasons. How is that?

13 MR. HAYSBERT: Thank you very much, Your Honor.

14 THE COURT: Just on the docket, just put for the  
15 reasons stated on the record.

16 Then the Court stands in recess on this case until  
17 tomorrow at 10:30.

18 (Hearing adjourned at 5:54 p.m.)  
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20  
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25

CERTIFICATION

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

X \_\_\_\_\_ /s/ \_\_\_\_\_ X

Jody A. Stewart

X \_\_\_\_\_ 8-30-2023 \_\_\_\_\_ X

Date

JODY A. STEWART, Official Court Reporter